(21,449 and 21,450.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 653.

JOSEPH KELLER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

No. 654.

LOUIS ULLMAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, begun and held in the United States Court Rooms, in the City of Chicago, in the Division and District aforesaid, on the first Monday of July, it being the sixth day thereof, in the year of our Lord One Thousand Nine Hundred and Eight, and of the Independence of the United States of America the 133rd year.

The Judges of said Court being absent on the first day of said Term said Court was by the Marshal adjourned until Tuesday, July 7, A. D. 1908, on which day the Honorable Kenesaw M. Landis, one of the Judges of said Court, presiding, Luman T. Hoy, United States Marshal for said District, and T. C. MacMillan, Clerk of said Court, by Charles A. Buell his Deputy, were present.

2 And afterwards, to wit, on the 8th day of July, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
JOSEPH KELLER, B. H. MARKELL, and LOUIS ULLMAN.

Come the grand jury this day and return in open Court an Indictment against Joseph Keller, B. H. Markell and Louis Ullman, the defendants herein, whereupon on motion of the United States Attorney, it is ordered by the Court that said indictment be filed and the cause placed upon the dockets of this Court.

3 And afterwards, to wit, on the 8th day of July, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Indictment, same being in the words and figures following to wit:

4 In the District Court of the United States of America for the Northern District of Illinois, Eastern Division, of the July Term, in the Year of Our Lord Nineteen Hundred and Eight.

NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, set:

The grand jurors for the United States of America, inquiring for the Eastern Division of the Northern District of Illinois, upon their oaths present, that Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, each late of the city of South Chicago, in the said division and district, on

the first day in June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep, maintain, control, support and harbor in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of porstitution, a certain alein woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the United States, and that the said Irene Bodi, came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so keeping, maintaining, controlling, supporting and harboring the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman well knew that the said Irene Bodi was an alien woman, to wit, a subject of Francis Joseph, Apostolic King of Hungary as aforesaid, and well knew that she, the said Irene Bodi, had entered the said United States within
5 three years prior to the time of so keeping, maintaining, controlling, supporting and harboring the said Irene Bodi, as aforesaid, against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

6 2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep, maintain, control, support and harbor in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

7 3. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep, in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien

woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so keeping the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman well knew that the said Irene Bodi, was an alien woman, to wit, a subject of Francis Joseph, Apostolic King of Hungary as aforesaid, and well knew that she, the said Irene Bodi, had entered the said United States within three years prior to the time of so keeping the said Irene Bodi, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

8 4. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien wman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

9 5. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did maintain in their certain house of prostitution there situate, to wit, a house of prostitution at number 9210 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so maintaining the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H.

Markell, otherwise called Barney Marko, and Louis Ullman well knew that the said Irene Bodi, was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary and had entered the said United States within three years prior thereto as aforesaid; against the peace and dignity of the said United States and contrary to the form of the Statute of the same in such case made and provided.

10 6. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did maintain in their certain house of prostitution there situate, to wit, a house of prostitution at number 9210 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

11 7. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did control in their certain house of prostitution there situate, to wit, a house of prostitution at number 9210 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so control-ing the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman well knew that the said Irene Bodi, was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary and had entered the said United States within three years prior thereto *Bodi*, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the Statute of the same in such case made and provided.

12 8. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and

Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did control in their certain house of prostitution there situate, to wit, a house of prostitution at number 9210 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

13 9. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did support in their certain house of prostitution there situate, to wit, a house of prostitution at number 9214 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so supporting the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman well knew that the said Irene Bodi, was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the said United States within three years prior thereto, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

14 10. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did support in their certain house of prostitution there situate, to wit, a house of prostitution at number 9214 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month

of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

15 11. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did harbor in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

An dthe grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so harboring the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman well knew that the said Irene Bodi, was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the said United States within three years prior thereto, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

16 12. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, on the first day of June, in the year of our Lord nineteen hundred and eight, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did harbor in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

17 13. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in

the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep, maintain, control, support and harbor in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi had entered the said United States, and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so keeping, maintaining, controlling, supporting and harboring the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markel, otherwise called Barney Marko, and Louis Ullman, well knew that the said Irene Bodi was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the said United States within three years prior thereto, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

18 14. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep, maintain, control, support and harbor in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

19 15. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said City of South Chicago, for the purpose of prostitution, a certain alien

woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so keeping, the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller,, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, well knew that the said Irene Bodi was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the said United States within three years prior thereto, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

20 16. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did keep in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said City of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

21 17. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did maintain in their certain house of prostitution there situate, to wit, a house of prostitution at number 9210 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do

further present, that at the time of so maintaining, the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, well knew that the said Irene Bodi was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the United States within three years prior thereto, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

22 18. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did maintain in their certain house of prostitution there situate, to wit, a house of prostitution at number 9210 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

23 19. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did control in their certain house of prostitution there situate, to wit, a house of prostitution at number 9214 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so controlling the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, well knew that the said Irene Bodi was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the said United States within three years prior thereto, as aforesaid; against

the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

24 20. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did control in their certain house of prostitution there situate, to wit, a house of prostitution at number 9214 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

25 21. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did support in their certain house of prostitution there situate, to wit, a house of prostitution at number 9214 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so supporting the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, well knew that the said Irene Bodi was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the said United States within three years prior thereto, as aforesaid; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

26 22. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney

Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did support in their certain house of prostitution there situate, to wit, a house of prostitution at number 9214 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

27 23. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did harbor in their certain house of prostitution there situate, to wit, a house of prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time of so harboring the said Irene Bodi, the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, well knew that the said Irene Bodi was an alien woman, a subject of Francis Joseph, Apostolic King of Hungary, and had entered the said United States within three years prior thereto, as aforesaid; against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

28 24. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that the said Joseph Keller, otherwise called Joe Keller, B. H. Markell, otherwise called Barney Marko, and Louis Ullman, on the first day of January, in the year of our Lord nineteen hundred and eight, and throughout the period of time from that day until and on the twenty-fifth day of June, in the same year, at South Chicago aforesaid, in the division and district aforesaid, unlawfully, wilfully and knowingly did harbor in their certain house of prostitution there situate, to wit, a house of

prostitution at number 9216 Harbor Avenue, in the said city of South Chicago, for the purpose of prostitution, a certain alien woman, to wit, Irene Bodi, who was then a subject of Francis Joseph, Apostolic King of Hungary, within three years after she, the said Irene Bodi, had entered the said United States and that the said Irene Bodi came to and entered the said United States in the month of November, in the year of our Lord nineteen hundred and five; against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

EDWIN W. SIMS,
United States Attorney.

Endorsed: No. 4069 United States District Court, Northern District of Illinois, Eastern Division. The United States of America *vs.* Joseph Keller, alias Joe Keller, B. H. Markell, alias Barney Marko, and Louis Ullman. Indictment Sec. 3, Act Feb. 20, 1907. A true bill, Robert Clark Foreman. Filed in open Court this 8th day of July, A. D. 1908. T. C. MacMillan, Clerk. Bail, $10000.

29 And afterwards, to wit, on the 7th day of October, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Comes the United States by Edwin W. Sims, Esq., United States Attorney, come also Joseph Keller and Louis Ullman in their own proper persons and said defendants being arraigned upon the Indictment filed herein against them each defendant pleads not guilty thereto.

30 And afterwards, to wit, on the 27th day of October, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Come the parties by their attorneys and the defendants in their own proper persons and the said defendants having heretofore interposed a plea of not guilty to the indictment filed herein against them, and this cause now coming on for trial, for their defense put themselves upon the country, whereupon comes a jury of good and lawful men, to wit: Thomas Mercer, M. W. Bach, F. A. Brown,

A. E. Larson, William Wilson, E. Robertson, Fred Holloway, Wm. Krumich, Sr., Edward Megaffin, Otto Strauschild, John Betty, Charles H. Carey who are duly elected, empaneled and sworn herein a true verdict to render according to the law and the evidence, who after listening to the evidence by the parties adduced, arguments of counsel and charge of the court, retire to their room to consider of their verdict, and afterwards return into court and render their verdict and upon their oath do say, "We the jury find the defendants Joseph Keller and Louis Ullman guilty as charged in the indictment," whereupon said defendants by their attorney enters his motion for a new trial herein and the same is by the Court set for hearing on November 2, 1908.

31 And afterwards, to wit, on the 4th day of November, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Comes the defendant and enters his motion for a new trial herein and this cause coming on to be heard on said motion, come the parties by their attorneys and after arguments of counsel, the court being fully advised in the premises, overrules and denies said motion, whereupon said defendant enters his motion in arrest of judgment and this cause coming on to be heard on said motion in arrest come the parties by their attorneys and after arguments of counsel the Court being fully advised in the premises, overrules and denies said motion in arrest of the judgment herein.

32 And afterwards, to wit, on the 4th day of November, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
LOUIS ULLMAN

Come the parties by their attorneys and the defendant in his own proper person in custody of the Marshal to have the sentence and Judgment of the Court pronounced upon him, he having heretofore on the twenty-seventh day of October A. D. 1908, one of the days of this term of this Court been adjudged guilty by a jury in due form of law as charged in the indictment filed herein against him and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore Considered and Ordered by the Court and is the sentence and judgment

of the Court upon the verdict of guilty so rendered herein by the jury as aforesaid, that the defendant Louis Ullman be confined and imprisoned in the United States Penitentiary at Fort Leavenworth, Kansas, for and during a period of eighteen months and that he forfeit and pay to the United States the costs in this behalf expended for which let execution issue.

It is further ordered by the Court that said Louis Ullman stand committed to said penitentiary until said costs be paid.

It is further ordered by the Court that the sentence in this cause begin to run at noon today Wednesday November 4 A. D. 1908.

33 And afterwards, to wit, on the 4th day of November, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
JOSEPH KELLER.

Come the parties by their attorneys and the defendant in his own proper person in custody of the Marshal to have the sentence and Judgment of the Court pronounced upon him, he having heretofore on the twenty-seventh day of October A. D. 1908, one of the days of this term of this Court been adjudged guilty by a jury in due form of law as charged in the indictment filed herein against him and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced, it is therefore Considered and Ordered by the Court and is the sentence and judgment of the Court upon the verdict of guilty so rendered herein by the jury as aforesaid, that the defendant Joseph Keller be confined and imprisoned in the United States Penitentiary at Fort Leavenworth, Kansas, for and during a period of eighteen months and that he forfeit and pay to the United States the costs in this behalf expended for which let execution issue.

It is further ordered by the Court that said Joseph Keller stand committed to said penitentiary until said costs be paid.

It is further ordered by the Court that the sentence in this cause begin to run at noon today Wednesday November 4 A. D. 1908.

34 And afterwards, to wit, on the 4th day of November, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Motion for New Trial, same being in the words and figures following, to wit:

35 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Motion for New Trial.

And now come the said defendants, Joseph Keller and Louis Ullman, by their attorneys, and move the court to set aside the verdict of the jury in the above entitled cause, and to grant a new trial upon the following grounds:

1. The verdict is not supported by the evidence.
2. The verdict of the jury is contrary to the law and the evidence in the case.
3. There is a variance between the indictment and the proof offered in support thereof.
4. The court erred in refusing at the close of the evidence for the prosecution and before any evidence was introduced on behalf of the defendant to direct a verdict finding the defendants not guilty.
5. The court erred in refusing at the close of all the evidence in the case to direct a verdict finding the defendant, Louis Ullman, not guilty.

36 6. The court erred in refusing at the close of all the evidence in the case to direct a verdict finding the defendant, Joseph Keller, not guilty.

7. The court erred during the trial of the above entitled cause in making remarks prejudicial to the defendants, Joseph Keller and Louis Ullman, in the hearing of the jurors who tried the above entitled cause.
8. The court erred in giving to the jury improper and illegal instructions, over the objection of the defendants.
9. The court erred in refusing to give to the jury proper and legal instructions on behalf of the defendants.
10. The court erred in admitting, for the consideration of the jury, on behalf of the United States, improper and illegal evidence.
11. The court erred in refusing to admit proper and legal evidence offered on behalf of the defendants.

H. C. LEVY,
B. C. BACHRACH,
Attorneys for Joseph Keller and Louis Ullman.

37 Endosed: 4069. In the District Court of the United States for the Northern District of Illinois. Eastern Division. United States *vs.* Joseph Keller and Louis Ullman. Motion for New Trial. Filed Nov. 4, 1908. T. C. MacMillan, Clerk. Messrs. H. C. Levey and Benjamin C. Bachrach, Attorneys for defendants.

38 And afterwards, to wit, on the 4th day of November, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Motion in Arrest of Judgment, same being in the words and figures following, to wit:

39 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Motion in Arrest of Judgment.

Now come the defendants, Joseph Keller and Louis Ullman, by their attorneys, H. C. Levey and Benjamin C. Bachrach, and move the court that judgment in the above entitled cause be arrested upon the following grounds:

1. The matters and things alleged in the indictment, and each and every count thereof, do not constitute an offense against the United States.

2. Each and every count of the indictment is insufficient, because no offense against the United States is alleged therein with the certainty required by law.

3. Each and every count of the indictment is insufficient, because the matters and things in said indictment set forth do not constitute offenses cognizable in the District Court of the United States and do not come within its power and jurisdiction.

40 4. The judgment in the above entitled cause should be arrested because the Act of Congress upon which said indictment in the above entitled cause is based, to-wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled "An Act to Regulate the Immigration of Aliens into the United States", in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States", is unconstitutional, invalid and void.

5. The judgment in the above entitled cause should be arrested because that portion of the Act of Congress upon which the indictment in this cause is based, to wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States", in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States",

41 is not constitutionally within the jurisdiction of the courts of the United States, and the matters and things therein re-

ferred to are judicially cognizable by State tribunals only, and legislative action thereon is among the constitutionally reserved rights of the several States.

6. The judgment in the above entitled cause should be arrested because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the tenth amendment to the Constitution of the United States, which is as follows: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively or to the people."

7. The judgment in the above entitled cause should be arrested because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to regulate the Immigra-
42 tion of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the fifth amendment to the Constitution of the United States, which is as follows: "Nor be deprived of life, liberty or property without due process of law."

8. The judgment in the above entitled cause should be arrested because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the fourteenth amendment to the Constitution of the United States.

9. The judgment in the above entitled cause should be arrested because the judgment and sentence in the above entitled cause are void because that portion of Section 3 of the Act of Congress of February 20, 1907, entitled, "An Act to regulate the immigration of aliens into the United States," to-wit: "or whoever shall keep, maintain, control, support or harbor in any house or other place for the purpose of prostitution or for any other immoral purpose any alien woman or girl within three years after she had entered the United States" is unconstitutional and void because the power to enact said portion of said Act of Congress of February 20, 1907, aforesaid, is not within the powers granted by the Constitution of the United States, and, therefore, Congress had no power under the Constitution to enact said law.

H. C. LEVEY AND
B. C. BACHRACH,
Att'ys for Defendants.

43 Endorsed: No. 4069. In the District Court of the United States for the Northern District of Illinois, Eastern Division. United States *vs.* Joseph Keller and Louis Ullman. No. 4069. Motion in Arrest of Judgment. Filed Nov. 4, 1908. T. C. MacMillan, Clerk. Messrs. H. C. Levey and Benjamin C. Bachrach, attorneys for defendants. W. J. Snyder, Law Stenographer, 1301 Ashland Block, Chicago.

44 And afterwards, to wit, on the 18th day of November, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Bill of Exceptions; same being in the words and figures following, to wit:

45 Copy.

In the District Court of United States.

UNITED STATES OF AMERICA
vs.
LOUIS ULLMAN ET AL.

Before S. A. Bethea, Judge and a Jury.

OCT. 27TH, 1908.

Index.

Witnesses.	Direct examination.	Cross-examination.	Redirect examination.	Recross-examination.

Bill of Exceptions.
Filed Nov. 18, 1908.

T. C. MACMILLAN, *Clerk.*
(B.)

46 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

UNITED STATES OF AMERICA
vs.
LOUIS ULLMAN ET AL.

Bill of Exceptions.

Be it remembered, That on the trial of the above entitled case, on the 27th day of October, A. D. 1908, at 10 o'clock A. M., before the Honorable S. H. Bethea, one of the Judges of said District Court, and a jury, the said United States of America introduced the following evidence:

Appearances.

Harry A. Parkin and Charles L. Abbott, Assistant United States District Attorneys, appearing on behalf of the Government.

Benjamin C. Bachrach, Esq., and Harry C. Levey, Esq., with Moses, Rosenthal & Kennedy, appearing on behalf of the defendants.

Thereupon Mr. Harry A. Parkin, on behalf of the United States, made an opening argument to the jury.

Thereupon Mr. Benjamin C. Bachrach, on behalf of the defendants, made an opening statement to the jury, as follows:

47 Mr. BACHRACH: May it please the Court, and Gentlemen of the Jury: The Government will probably be able to prove that at South Chicago, as stated in the indictment, these two men kept a house of prostitution; that that woman, Irene Bodi, was an inmate and prostitute in that house. Whether they will be able to show that she is an alien woman, whether the arrest was made before she was three years or afterwards——

Mr. PARKIN: We can't hear.

Mr. BACHRACH: The defence will show, the defendants, both of them, that they bought that place last November, which is a year ago; that when they bought that place and came into possession of it that woman was there and had been there I don't know how long. That place out there is a saloon down stairs with rooms that the women have upstairs in which they practice their prostitution, and a business arrangement is made about drinks, they get a commission on drinks that they sell, and they have to pay out of their money which they receive from each man instead of board, they paid only a dollar a week and the difference was made up by paying part of the money they got by practicing prostitution with each man. The defence will be that at that time and at no time while they were there did either of them know, that is, the fact that that woman had not been in the United States three years.

48 Mr. ABBOTT: I don't think that ought to come up here, your Honor.

The COURT: I will hold the same as I did in the other case. I instruct the jury it makes no difference——

Mr. BACHRACH: You ought not to instruct them now, if the Court please, I respectfully suggest.

The COURT: I am instructing you now not to mix the jury up by trying to have pass on them——

Mr. BACHRACH: I take an exception to the Court's ruling at this time. I have a right to state what I expect to show. You ought not to instruct——

The COURT: You have a right to think that I ought not to instruct them anyway? There is no difference that I see——

Mr. BACHRACH: I think in any event that you ought not to instruct, in any event, the jury, but even if you do you ought not to instruct now before I can put in my defence and state what my case is.

The COURT: All right. The only trouble is you may get the jury a little confused on what they are passing on, and I don't want them to do that——

Mr. BACHRACH: I understand that the Court said that I take an exception?

The COURT: To pass on the question before it, I am satis-
49 fied whatever it is, if they pass on that question and not a lot of other questions.

Mr. BACHRACH: I take exception to the Court's talking to them now.

The COURT: All right, go ahead.

To which ruling of the Court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: I expect to show that these men did not know that that woman had been here three years. I expect when I have shown you or after hearing the Court's instructions to the jury, you will find that these men are not criminals and could not be criminals and outlaws, I expect that, that there was nothing told them when they bought the place to warn them that they had an alien woman that had been in the country less than three years, and I expect that when I have shown you all that you will return a verdict of not guilty, if you believe it is true.

The COURT: Swear the witnesses for the government.

The CLERK: The witnesses on behalf of the United States will please rise and be sworn, all of the witnesses on behalf of the United States.

Mr. PARKIN: Of course the record will show that we insist that all of the statements with reference to knowledge is *is* im-
50 proper and was under our objection, in order that he may not contend when he makes his proof that we allowed him to make that opening statement.

The COURT: All right.

Thereupon the Government to maintain the issues on its behalf introduced the following evidence to wit:

51 MICHAEL HEITLER, a witness called on behalf of the United States was duly sworn, examined in chief by Mr. Parkin, and testified as follows:

My name is Michael Heitler. Live at 248 Washington Boulevard. Am acquainted with Joseph Keller and Louis Ullman. These gentlemen sitting to your left (indicating the defendants). I know them a number of years in New York City. I met them last November in the City of Chicago, Illinois, under the following circumstances: Them two gentlemen, I know them, as I said, for a number of years, and they come to see me, and they stated to me they are broke, they ain't got any money to start in any kind of business or to do anything in the City of Chicago; so I told them to go ahead and look for any kind of business and I will lend them the money to go and buy any kind of business at all and they come down in a few days later and they stated they have a business

in South Chicago, that they bought it. I asked them what the amount will be and they says to me about sixteen hundred dollars. I told them to go ahead and buy it and I will buy the place for them. They told me what kind of place it was—a saloon. The address was 9216 Harbor Avenue, South Chicago, in Chicago, Illinois. After about four months ago, or five months ago,
52 rather, the place was raided by the officers here from the United States Government. At the time I had the conversation with them I went over and bought the place for them. I did not went over to South Chicago, but they come over to me in my place of business and I went up to the attorney for these people what had possessed of that place and I bought the place from them and they should pay me so much a month. I turned that saloon over to them two defendants. There was a writing containing that agreement. I have not got it now. You (Mr. Parkin) have it. The one that you have I made in November, about five months later. The original contract was made in November. I have only judgment notes from these fellows. Subsequent to that, after this first agreement in November, this agreement that I hold in my hand, this contract, is the only other agreement made. Those (indicating) are the signatures of myself, Joseph Keller and Louis Ullman, the defendants in this case. That agreement was made at the date it bears.

Thereupon said contract was marked "Government Exhibit 1," received in evidence and read to the jury, which said "Government Exhibit 1" is in the words and figures as follows, to wit:

53 Gov. Ex. (1).

Agreement made this 27th day of April A. D. 1908, between Michael Heitler, of the first part, and Joseph Keller and Louis Allman, of the second part, all of Chicago, Illinois.

Whereas:—Said second parties have purchased from said first party, the business and personal property, and the lease, said lease being for three years, of the premises at 9216 Harbor Avenue, Chicago, Illinois, for the sum of $2200.00, on which $1500.00 has been paid, leaving a balance of $700.00, which is now due and unpaid.

It is hereby agreed by and between the parties hereto, that the said sum of $700.00 shall be paid in monthly installments of $100.00 each, as is evidenced by seven notes made by the said second parties, of $100.00 each, dated April 27th, A. D. 1908, to the order of Michael Heitler, and due on or before May 25th, June 25th, July 25th, August 25th, September 25th, October 25th, and November 25th, 1908, with interest thereon at 6 per cent per annum before maturity, and 7 per cent per annum thereafter, payable at the Union Bank in Chicago, Illinois. The bill of sale of the property in said premises, and the lease thereof, and all papers pertaining to the same to be held by the said Michael Heitler, until the payments herein to be made are fully paid and complied with.

Upon the payment of the said $700.00 the said lease and bill of sale and all papers pertaining to said premises to be turned over to the said parties of the second part. It is hereby agreed that the said parties of the second part may at any time make a sale of their interest in the property and the business in the said premises subject to the payments as herein set forth. Time is of the essence of this contract, and of all of its conditions.

Should the said second parties fail to perform this contract, or any part thereof, or fail to make any of the payments as above set forth, this contract shall thereby at the option of the said first party be determined and declared null and void; and all payments made thereunder shall be forfeited to said first party as liquidated damages. The conditions of this contract shall be binding upon the heirs, executors, administrators, and assigns of the said parties.

In witness whereof we have hereunto set our hands and seals this 27th day of April A. D. 1908.

MIKE HEITLER. [SEAL.]
JOSEPH KELLER. [SEAL.]
LOUIS ULMANN. [SEAL.]

54 Mr. PARKIN:

Q. Do you know whether or not the defendants occupied the premises continuously from the time in November that you bought them until the raid was made?

A. I don't know that they was living there or not.

55 IRENE BODI, a witness called on behalf of the United States was duly sworn, examined in chief by Mr. Abbott and testified as follows:

It will be three years next November that I came to this country. I landed at New York. I came over by the Steamer Slavonia. From New York I went to Bensonhurst. It will be a year that I am here at Chicago. When I came to Chicago I can't remember the street or the names for that place where I went. I lived there at 9216 Harbor Avenue. I started living there in November, 1907. I continued to live at 9216 Harbor Avenue, South Chicago, until they did arrest me and brought me to jail. That was in the latter part of June this year. I can't say what I did at that place. I can't tell it. I made a living by practicing prostitution at that place. During all the time that I lived there I practiced prostitution. There were other women who lived there that practiced prostitution. I know of my own knowledge who the proprietors of that place were. They were Mr. Ullman and Mr. Keller and Mr. Markell. When I received money from men with whom I practiced prostitution

56 I gave all the money that I received, and I received some check for it. Sometimes I gave it, the money, to Keller, Mrs. Keller, to Mrs. Ullman, and sometimes to Mr. Ullman, whichever was down stairs. I did not give any to Mr. Keller or Mrs. Keller, during the latter part of my stay there. Since they had two places then he (Mr. Keller) was not so much around. During the latter part of my stay in that house I gave the money a couple of times to Markell, for the third person, and I gave Mr. Ullman money a couple

of times when Mrs. Ullman was not there. Every Monday they exchanged the checks that I would get in return for the money that I gave them. They cashed the checks. Mr. Ullman and Mr. Keller and sometimes Mr. Markell gave me the cash money. Those two men (indicating the two defendants in the case) are the two men whom I have mentioned. I was born in Hungary. I lived in Hungary up to the time I came to this country. My father is alive.

Q. Was your father ever in America?

Mr. BACHRACH: I object, because it does not appear that she knows.

Mr. ABBOTT:

Q. Do you know whether or not your father ever was in America?

Mr. BACHRACH: I object. She cannot know. It may have been before she was born.

57 The COURT: Let her answer.

Mr. BACHRACH: Exception.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

A. Never was.

The WITNESS: I am married. I think my husband was 28 years old when I married him. I think I had known him about a year, I should say, before. Since I have known him he has never been in this country, America. I know he is now a citizen of Hungary. I don't know where Markell is.

Cross-examination of witness IRENE BODI, by Mr. BACHRACH:

I think it was in the year 1905 that I came to the United States. It was in 1905 in November. I landed in New York in Castle Garden. When I landed I gave the same name which I got, Irene Bodi. That is my husband's name. I was fifteen years old when I got married. I don't know exactly when I was married. I am thirty-two years old. I think I have been married seventeen years. I never left my husband. My husband was satisfied, he gave

58 me the consent to come out, he was a sick man, and a sick man, he could not keep up the children, could not support the children and me, and I come out to this country. I have got three children. They are by my mother-in-law in Hungary. My business as that of a prostitute has been about ten or eleven months. Before I came to Chicago, in the United States, I was in New York, and I was in the country and different places working out there. I was in that house of prostitution in South Chicago, 9216 Harbor Avenue, when Keller and Ullman came there. Alma was the boss when I came there.

Q. How long after you came was it that Keller came, how long?

A. I can't remember exactly whether it was one or two or three months.

Witness IRENE BODI: I remember there was one officer, police officer, coming around there and taking the names of the women in

this place. He did not say nothing and they give our names. They did not ask how long I had been in this country.

Q. Did you have any talk with Ullman and Keller about how long you had been in this country?

A. It was with Mrs. Ullman I spoke about it.

59 Q. Did you ever talk with Mr. Ullman and Mr. Keller when they came to that place there about that?

A. I don't remember.

Q. Will you say you did not?

A. He never asked me, that officer.

Q. No; will you say you did not have a talk with Ullman and Keller when they came there the first day about how long you were in this country?

A. He never asked me.

Q. Did you ever tell him?

A. I did tell for the ladies, for Mrs. Ullman.

Q. Did you tell Keller and Ullman?

A. I did not spoke to him.

Q. Then you did not tell either Ullman or Keller?

A. Some time he asked, Mr. Ullman, of me and the rest of the girls and I for Ullman how long I am there.

Q. What did you tell him?

A. I told him how long I am here.

Q. What did you say to him?

A. I told him about two and a half was years that time I am here.

Q. Isn't it a fact that you told him three and a half years?

A. No sir.

60 Redirect examination of witness IRENE BODI by Mr. Abbott:

Mrs. Ullman talks Hungarian. I had my talk with her about that. Ullman cannot talk Hungarian, nor can Keller.

Recross-examination of witness IRENE BODI by Mr. Bachrach:

Both Ullman and Keller talk German. I talked German with them, which way I could speak. I speak to them a little in German. And I talked with Ullman in German about how long I was here. I told them I was here two and one half years. I told them that about a month or two months before I was arrested.

Mr. ABBOTT: Was that the first time that either Keller or Ullman asked you how long you were in the country?

A. Yes sir, that time.

61 DAVID R. FRANK, a witness called on behalf of the United States, was first duly sworn, examined in chief by Mr. Parkin and testified as follows:

Live at 23 Melrose street. My business is that of newspaper, Hungarian newspaper. I was born in Hungary. I know who was the Apostolic King of Hungary from November, 1907, up to the present time. It was Francis Joseph, King of Hungary and Kaiser of Austria.

62 EDWIN NORTHRUP, called as a witness on behalf of the United States, was duly sworn, examined in chief by Mr. Parkin and testified as follows:

My business is that of Deputy United States Marshal. I have been such about a year and a half. I first saw Irene Bodi, the witness who has just testified, on the night of the 25th of June of this year, 1908, at 9216 Harbor Avenue. We went there under orders to make a raid. That was in South Chicago, Chicago, Cook County, Illinois, in this Divison and District. This Irene Bodi was at home in this house. There was a saloon and there were girls there. Yes, it was a house of prostitution.

Cross-examination of witness NORTHRUP by Mr. BACHRACH:

I didn't see any prostitution practiced while I was there. It is a fact that all I know about it is what I have been told and observed. I saw those ladies sitting around there and from their dress and appearance I took that to be their business.

63 Redirect examination of witness NORTHRUP by Mr. PARKIN:

It is pretty hard to describe the costumes worn by these ladies on this occasion. There was not much of them. They just threw wrappers on, that is all there was to it, something thrown on. They were not engaged in any occupation when I saw them. They sat around in what they call parlors and they had a piano there and we went in there. They were drinking. There were four of them I think. This girl was one of them.

Whereupon the Government rested.

Thereupon the defendants, by their counsel, presented to the Court the following motion in writing:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Now come the defendants, Joseph Keller and Louis Ullman, by their counsel, at the close of the evidence for the prosecution
64 and before any evidence has been introduced by the defense, and move the court to exclude all of the evidence for the United States, and give to the jury the following instructions:

The Court instructs the jury to find the defendant, Louis Ullman, not guilty.

The Court instructs the jury to find the defendant, Joseph Keller, not guilty, for the following reasons:

1. The allegation in the indictment that Irene Bodi was an alien woman has not been sufficiently proved.

2. The evidence in said cause is insufficient to support a verdict of guilty.

3. The evidence fails to show that South Chicago, mentioned in the indictment, is a city; and

4. The Act of Congress on which the indictment is based is unconstitutional and invalid.

Which said written motion for a directed verdict was overruled by the court.

To which ruling of the court the defendants and each of them, by their counsel, then and there duly excepted.

65 Whereupon the defendants, and each of them, to maintain the issues on their behalf introduced the following evidence, to wit:

LOUIS ULLMAN, one of the defendants in the above entitled cause, was first duly sworn, examined in chief by Mr. Bachrach and testified as follows:

I am one of the defendants in this case. Am fifty two years old. I have never been convicted of an offense before. I was once locked up and my wife in South Chicago for interfering in an officer's duty. I know Irene Bodi. I talk German. I first saw her in my life when I bought the place. When I came in she was there already. That was in November, last November, 1907, in the saloon at 9216 Harbor Avenue, South Chicago.

66 Q. Now, did you talk to her?

A. Yes sir.

Q. In what language?

A. German

Q. What did you say to her and what did she say to you?

A. When I bought that place at night, when I took——

Mr. ABBOTT: I object to that.

Mr. BACHRACH:

Q. What did you say to her?

Mr. PARKIN: Don't answer the question. I object unless he states what the conversation is about.

Mr. BACHRACH: I am waiting for the Court. There is an objection, if the court please, to the question.

The COURT: What is the question?

Mr. BACHRACH: Read the question.

(Whereupon the question and answer was read).

Mr. PARKIN: It led up to the point of a conversation between this witness and Irene Bodi. Now he wants to tell the conversation and I apprehend that the conversation is about something that is objectionable, something is *is* not proper for the jury to consider.

The COURT: Well, I think I will sustain the objection. Note your exception.

Mr. BACHRACH: Exception.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: I offer to show, if the court please, that in that conversation, fixing the time and place in November, when he met her there at that place——

67 The COURT: Yes, in 1907.

Mr. BACHMAN: In 1907. That in that conversation he asked her how long she had been in this country and she told him three and a half years, in the German language.

The COURT: I still sustain the objection.

Mr. BACHRACH: They have not objected to it.

Mr. PARKIN: I object as showing or attempting to show—it if not a proper matter for the jury to consider.

The COURT: I sustain the objection. The question is not proper at all. Your offer to prove anything don't cut any figure, but your question cuts a figure.

Mr. BACHRACH: My question was a conversation.

The COURT: The jury must not consider that, it is not before the jury at all.

Mr. BACHRACH: I take an exception to the Court's ruling.

To which ruling of the Court the defendants and each of them by their counsel then and there duly excepted.

The COURT: The question is whether he kept her there as the indictment charges. The law is——

Mr. BACHRACH: I respectfully object to the court——

The COURT: You may object to anything and except. I want the jury to understand the thing they are trying; they are not trying the law, your duty is to enforce the law as it is written, and if you don't like it you have got to enforce it, if it is proved beyond a reasonable doubt, everything against the defendant, as

68 charged in the indictment.

Mr. BACHRACH: I take an exception to the last remarks of the court at this time.

The COURT: Yes.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: I have nothing further to ask the witness. That is all.

69 JOSEPH KELLER, one of the defendants in the above entitled cause, was first duly sworn, examined in chief by Mr. Bachrach and testified as follows:

I am a defendant in this case.

Q. From November, the first of November, 1907, till the 25th of June 1908 did you know that Irene Bodi had not been in the United States three years?

Mr. PARKIN: Wait a minute, don't answer that question. Objection.

The COURT: Objection sustained.

Mr. BACHRACH: Exception.

To which said ruling of the court the defendant Keller, by his counsel then and there duly excepted.

Mr. BACHRACH: I offer to show by this witness that he did not know it during any of that time.

Mr. PARKIN: I object to the offer.

The COURT: Objection sustained.

Mr. BACHRACH: Exception.

To which ruling of the Court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: Did you have any conversation with Irene Bodi in the month of November when you took possession of that place?

A. Yes sir.

70 Q. Wait a minute—at 9216 Harbor Avenue, South Chicago?

A. Yes sir.

Q. In what language was that conversation?

A. Mr. Ullman spoke to her in German in my presence.

Mr. PARKIN: Wait a minute, what are you talking about?

Mr. BACHRACH: I will ask it.

Q. Ullman was conversing there?

A. Yes sir, in my presence.

Q. You heard them?

A. Yes sir, we were talking together——

Q. Just pay attention to the question, don't be so fast. Tell what that conversation was.

Mr. PARKIN: I object to that for the same reason, it is the same subject.

The COURT: Objection sustained.

Mr. BACHRACH. Exception.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: I offer to show, if the Court please, that in that conversation the witness, Irene Bodi, in German, stated to Mr. Ullman in the presence of this witness, that she had been in the United States three and a half years.

Mr. PARKIN: Objection.

The COURT: Sustained.

Mr. BACHRACH: Exception.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

71 The defendants rest.

Thereupon the defendants, Joseph Keller and Louis Ullman, by their counsel presented to the court a written motion, which is in the words and figures as follows:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Now come the defendants, Joseph Keller and Louis Ullman, at the close of all the evidence in the case, and, by their counsel, move the court to exclude all the evidence in the case from the jury, and give the jury the following instructions:

The court instructs the jury to find the defendant, Louis Ullman, not guilty, and

The court instructs the jury to find the defendant, Joseph Keller, not guilty, for the following reasons:

1. The allegation in the indictment that Irene Bodi was
72 an alien woman has not been sufficiently proved.

2. The evidence in said cause is insufficient to support a verdict of guilty.

3. The Government has failed to prove that South Chicago, mentioned in the indictment, is a city, as charged.

4. The Act of Congress upon which the indictment is based is unconstitutional and invalid.

Which said motion was then and there denied by the court.

To which ruling of the court the defendants and each of them, by their counsel, then and there duly excepted.

Which was all the evidence offered or received on the trial of the above entitled cause.

73 The COURT: Go on with your argument now,—you are not going to make any argument?

Mr. BACHRACH: No.

Mr. PARKIN: Just put in our record there that the statement of counsel for defendants is in respect to this conversation. With reference to the testimony of the defendants, counsel for defendants stated to the Court that his offer with reference to the conversations with Irene Bodi by either of the defendants was offered solely for the purpose of showing the knowledge or lack of knowledge of the defendants respecting the length of time Irene Bodi had been in this country and for no other purpose whatever.

74 Thereupon the defendants and each of them by their counsel requested the Court to give to the jury each and several the following instructions and the principles of law contained in said instructions:

And thereupon the court was requested on behalf of the defendant, Joseph Keller, to charge the jury in manner and form as stated in Defendant's Request 1, to wit, as follows:

75 *Defendant's Request* 1.

The Court instructs the jury that in order to warrant a verdict of guilty against the defendant, the jury must be convinced by the evidence, beyond all reasonable doubt, of the following propositions:

1. That the defendant, Joseph Kellar, kept, maintained, controlled, supported, or harbored in a house of prostitution at 9216 Harbor Avenue, in the City of South Chicago, a certain alien woman.

2. That said alien woman at the time that said Joseph Kellar kept, maintained, controlled, supported or harbored her in his said house, (if the jury are convinced beyond all reasonable doubt from the evidence in this case that he, the said Joseph Kellar, did keep, maintain, control, support, or harbor said woman in his said house), was in the United States for a period of less than three years.

3. That said Joseph Kellar, at the time he so kept, maintained, controlled, supported or harbored said alien woman, knew that said alien woman at the time he, the said Joseph Kellar, (if he kept, maintained, controlled, supported, and harbored her in his said house), had been in the United States for a period of less than three years.

And the Court instructs the jury that if the government has failed to prove any one of said propositions in this case beyond a reasonable doubt, or if the jury, after a consideration of all the evidence in the case, are not convinced beyond a reasonable doubt, of the truth of any one of said three propositions, the jury should find the defendant, Joseph Kellar, not guilty.

76 But the court refused to charge the jury as requested in said Defendant's Request 1.

To which refusal of the court to charge the jury as requested in said Defendant's Request 1, the defendant, Joseph Keller, by his counsel then and there duly excepted.

And thereupon the court was requested on behalf of the defendant, Joseph Keller, to charge the jury in manner and form as stated in Defendant's Request 2, to wit, as follows:

77 *Defendant's Request* 2.

The presumption of innocence in this case means that the law presumes that the defendant, Joseph Kellar, did not know that Irene Bodi had not been in the United States of America for three years at the time he, the said Kellar, permitted the said Irene Bodi to practice prostitution at Number 9216 Harbor Avenue, South Chicago, and this presumption, as so explained to you, should continue and prevail in the minds of the jury throughout the trial and during the deliberations of the jurors in the jury-room in such a way that unless the jury are convinced from the evidence, beyond all reasonable doubt, that Joseph Keller, at the time that the said

Irene Bodi practiced prostitution at Number 9216 Harbor Avenue, knew that said Irene Bodi had been in the United States for less than three years, the jury should find the defendant not guilty.

But the court refused to charge the jury as requested in said Defendant's Request 2.

To which refusal of the court to charge the jury as requested in said Defendant's Request 2, the defendant, Joseph Keller, by his counsel then and there duly excepted.

And thereupon the court was requested on behalf of the defendant, Joseph Keller, to charge the jury in manner and form as stated in Defendant's Request 3, to wit, as follows:

78 *Defendant's Request* 3.

The Court instructs the jury that even if the jury should believe, from the evidence, beyond all reasonable doubt, that the defendant, Joseph Kellar, knowingly kept, or maintained, or controlled, or supported, or harbored in a house of prostitution at Number 9216 Harbor Avenue, in the City of South Chicago, one Irene Bodi for the purpose of prostitution, and that said Irene Bodi was an alien woman, and at the time of her practicing prostitution in said house as aforesaid she had been in the United States for less than three years, nevertheless unless the jury are also convinced beyond all reasonable doubt from the evidence, that at the time the said Irene Bodi practiced prostitution at said Number 9216 Harbor Avenue, as aforesaid, the said Joseph Kellar knew that said Irene Bodi had been in the United States for less than three years, you should find the defendant, Joseph Kellar, not guilty.

But the Court refused to charge the jury as requested in said "Defendant's Request 3."

To which refusal of the court to charge the jury as requested in said Defendant's Request 3, the defendant, Joseph Keller, by his counsel then and there duly excepted.

And thereupon the court on behalf of the defendant, Louis Ullman, was requested to charge the jury in manner and form as stated in Defendant's Request 4, to wit, as follows:

79 *Defendant's Request* 4.

The Court instructs the jury that in order to warrant a verdict of guilty against the defendant, Louis Ullman, the jury must be convinced by the evidence, beyond all reasonable doubt, of the following propositions:

1. That the defendant, Louis Ullman, kept, maintained, controlled, supported, or harbored in a house of prostitution at 9216 Harbor Avenue, in the City of South Chicago, a certain alien woman.

2. That said alien woman at the time that said Louis Ullman kept, maintained, controlled, supported or harbored her in his said house (if the jury are convinced beyond all reasonable doubt from the evi-

dence in this case that he, said Ullman, did keep, maintain, control, support, or harbor said woman in his said house), was in the United States for a period of less than three years.

3. That said Ullman, at the time he so kept, maintained, controlled, supported or harbored said alien woman, knew that said alien woman at the time he, the said Ullman (if he kept, maintained, controlled, supported, and harbored her in his said house), had been in the United States for a period of less than three years.

And the Court instructs the jury that if the Government has failed to prove any one of said propositions in this case beyond a reasonable doubt, or if the jury, after a consideration of all the evidence in the case, are not convinced beyond a reasonable doubt, of the truth of any one of said three propositions, the jury should find the defendant, Louis Ullman, not guilty.

80 But the court refused to charge the jury as requested in said Defendant's Request 4.

To which refusal of the court to charge the jury as requested in said Defendant's Request 4, the defendant, Louis Ullman, by his counsel then and there duly excepted.

And thereupon the court was requested on behalf of the defendant, Louis Ullman, to charge the jury in manner and form as stated in Defendant's Request 5, to wit, as follows:

81 *Defendant's Request* 5.

The presumption of innocence in this case means that the law presumes that the defendant, Louis Ullman, did not know that Irene Bodi had not been in the United States of America for three years at the time he, the said Louis Ullman, permitted the said Irene Bodi to practice prostitution at Number 9216 Harbor Avenue, South Chicago, and this presumption, as so explained to you, should continue and prevail in the minds of the jury throughout the trial and during the deliberations of the jurors in the jury-room in such a way that unless the jury are convinced from the evidence, beyond all reasonable doubt, that Louis Ullman, at the time that the said Irene Bodi practiced prostitution at Number 9216 Harbor Avenue, knew that said Irene Bodi had been in the United States for less than three years, the jury should find the defendant not guilty.

But the court refused to charge the jury as requested in said Defendant's Request 5.

To which refusal of the court to charge the jury as requested in said Defendant's Request 5, the defendant, Louis Ullman, by his counsel then and there duly excepted.

And thereupon the court was requested on behalf of the defendant, Louis Ullman, to charge the jury in manner and form as stated in Defendant's Request 6, to wit, as follows:

82 *Defendant's Request 6.*

The Court instructs the jury that even if the jury should believe, from the evidence, beyond all reasonable doubt, that the defendant, Louis Ullman, knowingly kept, or maintained, or controlled, or supported, or harbored in a house of prostitution at Number 9216 Harbor Avenue, in the City of South Chicago, one Irene Bodi for the purpose of prostitution, and that said Irene Bodi was an alien woman, and at the time of her practicing prostitution in said house as aforesaid she had been in the United States for less than three years, nevertheless unless the jury are also convinced beyond all reasonable doubt from the evidence, that at the time the said Irene Bodi practiced prostitution at said Number 9216 Harbor Avenue, as aforesaid, the said Louis Ullman knew that said Irene Bodi had been in the United States for less than three years, you should find the defendant, Louis Ullman, not guilty.

But the court refused to charge the jury as requested in said Defendant's Request 6.

To which refusal of the court to charge the jury as requested in said Defendant's Request 6, the defendant, Louis Ullman, by his counsel then and there duly excepted.

83 Whereupon the Court instructed the jury orally as follows:

The COURT: This indictment charges a violation of Section 3 of the Act of 1898, as amended.

That section provides, so far as it is involved here, that

"Whoever shall hold or attempt to hold any alien woman or girl "for any such purpose"—that means immoral purpose—"in pur- "suance of such illegal importation, or whoever shall keep, main- "tain, control, support or barbor in any house, or other place, for "the purpose of prostitution, or for any other immoral purpose, any "alien woman or girl, within three years after she shall have en- "tered the United States, shall in every such case, be deemed guilty "of a felony," and so forth.

Now you are the sole judges of the facts, but you have nothing to do with the questions of law, except to take the law from the Court.

The Court will attempt to tell you what is charged in the indictment. You will take the law from the Court, but on questions of fact you are the sole judges, whatever I may think about it, or say about it, or you may think I think or say. You pass on that among yourselves on the questions of fact alone.

You have nothing to do with the policy of the law. That is for Congress. Congress makes the law, and the administrative department attends to the enforcement of it in proper cases,—that means the District Attorney; and it is for you to enforce the law as it is written. If the Government has proven beyond a reasonable doubt that the defendants are guilty as charged in the indictment, then you must find them guilty regardless of what you think the policy of the law ought to be. It is important that you should en-

84 force the law as written. You do your part of it and Congress will do its part, and the President and his department their

part, and the Courts will have to do their part; each department depending upon it to see to its own department. That is the intention of our form of Government.

Now the law I have stated to you. In the indictment they have charged, as set out there, "that they harbored in the City of South Chicago," and it is not for you if there is no such city—you are simply to pass upon it under the indictment as presented to you, you are to pass upon the fact whether or not they harbored, the defendants harbored, as charged therein, this woman here, and whether she was an alien and had been in this country less than three years; and did they harbor her? Did they hold her? Did they keep her in a house of ill fame? Was it a house of ill fame? All the questions of fact are for you. Was it a house of ill fame, and had she been here less than three years?

It does not make any difference whether they knew that she had been in this country less than three years or not. The law presumes that they are guilty, if the rest is proved, as charged in the indictment, whether they knew it or not; that is, if you believe they are guilty, proved guilty beyond all reasonable doubt.

Now then it is your duty to protect the innocent as well as to enforce the law against the guilty. In this country for years there have been certain necessary things that must be proved against a defendant before you can find him guilty. It is important in this case, and in all criminal cases, for you to determine whether
85 they have proved beyond a reasonable doubt the things that I shall call your attention to now, and these things are true that I call your attention to now. For instance, a man is always presumed innocent unless he is proved guilty beyond all reasonable doubt; and the indictment is no proof of guilt. That is simply a way of bringing the defendant, or defendants, into court and putting them on trial. The Government must prove everything charged in the indictment, as therein charged; and the burden of proof is upon the Government to prove the defendants guilty beyond all reasonable doubt. You can not presume them guilty. The indictment is no proof so far as you are concerned on the questions of fact in this case. A reasonable doubt is a well *d*ounded doubt which, if presented to a reasonable man in the ordinary affairs of life, will cause him to hesitate and pause. There is no mystery about it. Of course the Government must in all cases prove a man guilty beyond all reasonable doubt. You cannot guess at it; and as I say, a reasonable doubt is a well founded doubt; you can not guess at it. You must presume from all the evidence, you must believe from all the evidence, that he has been proved guilty beyond all reasonable doubt, in order to find him guilty, or find them guilty.

You are the judges of the credibility of the witnesses,—the sole judges. You judge them by their interest, or want of interest in the case; by their appearance upon the witness stand. You can tell from their appearance what you think about it. If you think they are truthful, why use that consideration in passing upon the case. You judge them by their bias, or prejudice or sympathy, or by their want or need of those things. You judge them by their ability and

opportunity to know and to remember, and by their intelli-
86 gence, or want of intelligence.

You must judge a government witness the same as any other witness, by their interest, or want of interest, and by their appearance upon the witness stand; and the same with the defendants. The defendants have a right to be witnesses; you must judge them just the same as the others, by their interest or want of interest, and by their appearance, what you think about them, based upon the evidence according to these instructions.

If a witness wilfully swears falsely to any material matter, if not corroborated by other witnesses or evidence in the case, you may disregard his entire testimony.

You must consider the question *If* intent. That is a question of fact for you to consider, but you must not consider whether the defendants knew that the complaining witness had been in this country less than three years or not. Now simply consider, did they do the things charged in the indictment as therein charged.

You have nothing to do with the punishment. That is for the Court, whether they will be punished at all or not, how much and all about it.

Now the form of your verdict is, if you find the defendants guilty as charged in the indictment, or some count thereof, "We, the jury, find the defendants guilty"; or if you find the defendants not guilty,

"We, the jury, find the defendants not guilty."

87 The COURT: Are there any other and further instructions you want for the Government?

Mr. PARKIN: Nothing, your honor.

The COURT: Anything for the defendant.

Mr. BACHRACH: No further instruction.

Thereupon Mr. Bachrach, counsel for the defendants excepted to that portion of the court's charge wherein the court said: "It don't make any difference whether they knew it or not."

The COURT: Of course you will except to that.

Thereupon Mr. Bachrach, counsel for the defendants excepted to that portion of the court's charge wherein the court told the jury: "You must consider the question of intent, but not whether they knew it or not."

The COURT: Yes, except to that, but the other question you except to that on the general question of intent. Of course that is for the jury.

Thereupon the jury retired to consider of their verdict.

Afterwards, on the same day, to wit: October 27th, 1908, the jury retu-ned into court the following verdict:

"We, the jury, find the defendant, Louis Ullman, guilty as charged in the indictment."

88 "We, the jury, find the defendant, Joseph Keller, guilty as charged in the indictment."

Which said verdict was signed by the entire jury.

Thereupon the defendants and each of them, by their counsel, then and there moved the court for a new trial.

The hearing of which said motion for a new trial was continued by the court until November 4th, 1908.

Thereupon the defendants, by their counsel, filed the following written motion for a new trial, which is in the words and figures as follows:

89 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Motion for New Trial.

And now come the said defendants, Joseph Keller and Louis Ullman, by their attorneys, and move the court to set aside the verdict of the jury in the above entitled cause, and to grant a new trial upon the following grounds:

1. The verdict is not supported by the evidence.
2. The verdict of the jury is contrary to the law and the evidence in the case.
3. There is a variance between the indictment and the proof offered in support thereof.
4. The court erred in refusing at the close of the evidence for the prosecution and before any evidence was introduced on behalf of the defendant to direct a verdict finding the defendants not guilty.
5. The court erred in refusing at the close of all the evidence in the case to direct a verdict finding the defendant, Louis Ullman, not guilty.

90 6. The court erred in refusing at the close of all the evidence in the case to direct a verdict finding the defendant, Joseph Keller, not guilty.

7. The court erred during the trial of the above entitled cause in making remarks prejudicial to the defendants, Joseph Keller and Louis Ullman, in the hearing of the jurors who tried the above entitled cause.
8. The court erred in giving to the jury improper and illegal instructions, over the objection of the defendants.
9. The court erred in refusing to give to the jury proper and legal instructions on behalf of the defendants.
10. The court erred in admitting, for the consideration of the jury, on behalf of the United States, improper and illegal evidence.
11. The court erred in refusing to admit proper and legal evidence offered on behalf of the defendants.

H. C. LEVEY,
B. C. BACHRACH,
Attorneys for Joseph Keller and Louis Ullman.

91 But the court overruled said motion of the defendants to set aside said verdicts of the jury so returned in said cause and to grant the defendants a new trial.

To which action of the court in refusing to set aside said verdicts and to grant said motion for a new trial the defendants, by their counsel, then and there duly excepted.

Thereupon the defendants by their counsel moved the court to arrest the judgment in this cause, and filed the following written motion, to wit:

92 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Motion in Arrest of Judgment.

Now come the defendants, Joseph Keller and Louis Ullman, by their attorneys, H. C. Levey and Benjamin C. Bachbach, and move the court that judgment in the above entitled cause be arrested upon the following grounds:

1. The matters and things alleged in the indictment, and each and every count thereof, do not constitute an offense against the United States.

2. Each and every count of the indictment is insufficient, because no offense against the United States is alleged therein with the certainty required by law.

3. Each and every count of the indictment is insufficient, because the matters and things in said indictment set forth do not constitute offenses cognizable in the District Court of the United States and do not come within its power and jurisdiction.

93 4. The judgment in the above entitled cause should be arrested because the Act of Congress upon which said indictment in the above entitled cause is based, to-wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled "An Act to Regulate the Immigration of Aliens into the United States," in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is unconstitutional, invalid and void.

5. The judgment in the above entitled cause should be arrested because that portion of the Act of Congress upon which the indictment in this cause is based, to wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate

the Immigration of Aliens into the United States," in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is
94 not constitutional within the jurisdiction of the courts of the United States, and the matters and things therein referred to are judicially cognizable by State tribunals only, and legislative action thereon is among the constitutionally reserved rights of the several States.

6. The judgment in the above entitled cause should be arrested because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the tenth amendment to the Constitution of the United States, which is as follows: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively or to the people."

7. The judgment in the above entitled cause should be arrested because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to regulate the Immigration of
95 Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the fifth amendment to the Constitution of the United States, which is as follows: "Nor be deprived of life, liberty or property without due process of law."

8. The judgment in the above entitled cause should be arrested because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the fourteenth amendment to the Constitution of the United States, which is as follows:

8½. The judgment should be arrested in the above entitled cause because that portion of Section 3 of the Act of Congress of February 20, 1907, entitled "An Act to regulate the immigration of aliens into the United States," to wit: "or whoever shall keep, maintain, control, support or harbor in any house or other place for the purpose of prostitution or for any other immoral purpose any alien woman or girl within three years after she had entered the United States," is unconstitutional and void because the power to enact said portion of said Act of Congress of February 20, 1907, aforesaid, is not within the powers granted by the Constitution of the United States,

and, therefore, Congress had no power under the Constitution to enact said law.

96 But the court overruled said motion of the defendants to arrest the judgment in this cause, and entered judgment upon the verdict.

To which action of the court, in refusing to grant the motion in arrest of judgment in this cause, and in entering judgment upon the verdict, the defendants by their counsel then and there duly excepted.

Whereupon the court sentenced the defendant, Joseph Keller to imprisonment in the Penitentiary at Leavenworth, Kansas, for a period of eighteen months and to pay the cost of the prosecution.

To which said sentence the defendant, Joseph Keller, by his counsel then and there duly excepted.

Whereupon the court sentenced the defendant, Louis Ullman, to imprisonment in the Penitentiary at Leavenworth, Kansas, for a period of eighteen months and to pay the cost of the prosecution.

To which said sentence, the defendant, Louis Ullman, by his counsel then and there duly excepted.

Whereupon the defendants by their counsel requested the court to fix the time in which the defendants could prepare, pre-

97 sent and file a bill of exceptions in the above entitled cause.

Whereupon the court granted thirty days to the defendants to prepare, present and file their bill of exceptions in said cause.

And forasmuch as said evidence and said proceedings and matters of exception do not appear of record in said cause this bill of exceptions is presented to the court by the defendants with the prayer that the same may be signed and sealed by the court, which is done this 18th day of November, A. D., 1908.

S. H. BETHEA,
Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

98 And afterwards, to wit, on the 1st day of December, A. D. 1901, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Assignment of Errors; same being in the words and figures following, to wit:

99 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES OF AMERICA
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Assignment of Errors.

And now comes the defendant, Louis Ullman, by Benjamin C. Bachrach, his attorney, and in connection with his petition for a writ of error, says that in the record and proceedings, and during

the trial of the above entitled cause in the said District Court error has intervened to his prejudice, and this defendant here assigns the following errors, to wit:

1. The District Court erred in denying the motion in arrest of judgment made on behalf of said Louis Ullman.

2. The matters and things alleged in the indictment and in each and every count thereof, do not constitute an offense against the United States.

3. Each and every count of the indictment is insufficient,
100 because the matters and things in said indictment set forth do not constitute offenses cognizable in the District Court of the United States, and do not come within its power and jurisdiction.

4. The judgment and sentence in the above entitled cause are void, because the Act of Congress upon which said indictment in the above entitled cause is based, to wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is unconstitutional, invalid and void.

5. The judgment and sentence in the above entitled cause are void because that portion of the Act of Congress upon which the indictment in this case is based, to wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose
101 of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States", is not constitutionally within the jurisdiction of the courts of the United States, and the matters and things therein referred to are judicially cognizable by State tribunals only, and legislative action thereon is among the constitutionally reserved rights of the several States.

6. The judgment and sentence in the above entitled cause are void, because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States", is in violation of the tenth amendment to the Constitution of the United States, which is as follows: "The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the states respectively or to the people".

7. The judgment and sentence in the above entitled cause
102 are void, because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regu-

late the Immigration of Aliens into the United States", to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States", is in violation of the fifth amendment to the Constitution of the United States, which is as follows: "Nor be deprived of life, liberty or property without due process of law".

8. The judgment and sentence in the above entitled cause are void, because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled "An Act to Regulate the Immigration of Aliens into the United States", to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States", is in violation of the fourteenth amendment to the Constitution of the United States.

8½. The judgment in the above entitled cause *are* void because *because* that portion of Section 3 of the Act of Congress of February 20, 1907, entitled, "An Act to regulate the immigration of aliens into the United States," to wit: "or whoever shall keep, maintain, control, support or harbor in any house or other place for the purpose of prostitution or for any other immoral purpose any alien woman or girl within three years after she had entered the United States" is unconstitutional and void because the power to enact said portion of said Act of Congress of February 20, 1907, aforesaid, is not within the powers granted by the constitution of the United States, and therefore, Congress had no power under the Constitution to enact said law.

9. The District Court erred in denying the motion for a
103 new trial made on behalf of Louis Ullman.

10. The District court erred in refusing to charge the jury on behalf of said Louis Ullman in manner and form as requested in said Defendant's Request 4, which said Defendant's Request 4 is as follows:

Defendant's Request 4.

The Court instructs the jury that in order to warrant a verdict of guilty against the defendant, the jury must be convinced by the evidence, beyond all reasonable doubt, of the following propositions:

1. That the defendant, Louis Ullman, kept, maintained, controlled, supported or harbored in a house of prostitution at 9216 Harbor Avenue, in the city of South Chicago, a certain alien woman.

2. That said alien woman at the time that said Louis Ullman kept, maintained, controlled, supported or harbored her in his said house, (if the jury are convinced beyond all reasonable doubt from the evidence in this case that he, the said Louis Ullman did keep, maintain, control, support, or harbor said woman in his said house), was in the United States for a period of less than three years.

3. That said Louis Ullman, at the time he so kept, maintained, controlled, supported or harbored said alien woman, knew
104 that said alien woman at the time he, the said Louis Ullman (if he kept, maintained, controlled, supported and harbored her in his said house), had been in the United States for a period of less than three years.

And the Court instructs the jury that if the government has failed to prove any one of said propositions in this case beyond a reasonable doubt, or if the jury, after a consideration of all the evidence in the case *beyond a reasonable doubt, or if the jury, after a consideration of all the evidence in the case,* are not convinced beyond a reasonable doubt, of the truth of any one of said three propositions, the jury should find the defendant Louis Ullman not guilty.

Said Defendant's Request 4 contains a correct statement of the law which was applicable to the case against Louis Ullman.
105 11. The District Court erred in refusing to charge the jury on behalf of said Louis Ullman in manner and form as requested in Defendant's Request 5, which said Defendant's Request 5 is as follows:

Defendant's Request 5.

The presumption of innocence in this case means that the law presumes that the defendant, Louis Ullman, did not know that Irene Bodi had not been in the United States of America for three years at the time he, the said Ullman permitted the said Irene Bodi to practice prostitution at Number 9216 Harbor Avenue, South Chicago, and this presumption, as so explained to you, should continue and prevail in the minds of the jury throughout the trial and during the deliberations of the jurors in the jury room in such a way that unless the jury are convinced from the evidence, beyond all reasonable doubt, that Louis Ullman at the time that the said Irene Bodi practiced prostitution at Number 9216 Harbor Avenue, knew that said Irene Bodi had been in the United States for less than three years, the jury should find the defendant not guilty.

Said Defendant's Request 5 contains a correct statement of the law which was applicable to the case against Louis Ullman.
106 12. The District Court erred in refusing to charge the jury on behalf of said Louis Ullman in manner and form as requested in Defendant's Request 6, which said Defendant's Request 6 is as follows:

Defendant's Request 6.

The court instructs the jury that even if the jury should believe, from the evidence, beyond all reasonable doubt, that the defendant, Louis Ullman, knowingly kept, or maintain-, or controlled, or supported, or harbored in a house of prostitution at Number 9216 Harbor Avenue in the city of South Chicago, one Irene Bodi for the

purpose of prostitution, and that said Irene Bodi was an alien woman, and at the time of her practicing prostitution in said house as aforesaid she had been in the United States for less than three years, nevertheless unless the jury are also convinced beyond all reasonable doubt from the evidence, that at the time the said Irene Bodi practiced prostitution at said Number 9216 Harbor Avenue, as aforesaid, the said Louis Ullman knew that said Irene Bodi had been in the United States for less than three years, you should find the defendant, Louis Ullman, not guilty.

Said Defendant's Request 6 contains a correct statement of the law which was applicable to the case against Louis Ullman.

107 13. The District Court erred in using the following language in the charge to the jury:

"You are to pass upon the facts whether or not the defendants harbored, as charged therein, this woman here, and whether she was an alien and had been in this country less than three years; and did they harbor her? Did they hold her? Did they keep her in a house of ill-fame? Was it a house of ill-fame? All the questions of fact are for you. Was it a house of ill-fame, and had she been here less than three years? It don't make any differnce whether they knew it or not. The law presumes that they are guilty, if the rest is true, as charged in the indictment, whether they knew it or not, that is, if you believe that they are guilty, proved guilty beyond all reasonable doubt."

Said portion of the charge was then and there objected to by the said defendant, Louis Ullman, as follows:

"Mr. BACHRACH: I except to that portion of the court's charge wherein the court said, "It don't make any difference whether they knew it or not."

"The COURT: Of course you will except to that."

108 14. The District Court erred in using the following language in the charge to the jury:

"You must consider the question of intent. That is a question of fact for you to consider, but you must not consider whether they knew or not. Now simply consider, did they do the things charged in the indictment as therein charged."

Said portion of the charge was then and there objected to by the said defendant, Louis Ullman, as follows:

"Mr. BACHRACH: I except to that portion of the court's charge wherein the court told the jury, "You must consider the question of intent, but not whether they knew it or not."

"The COURT: Yes, except to that."

109 15. The District Court erred in making improper remarks in the presence and hearing of the jury, prejudicial to the defendant, Louis Ullman, while counsel for the defendant was making the opening statement to the jury as follows:

"The defense will be that at that time and at no time while they were there did either of them know, that is the fact that that woman had not been in the United States three years.

Mr. ABBOTT: I don't think that ought to come up here, your honor.

The COURT: I will hold the same as I did in the other case. I instruct the jury it makes no difference——

Mr. BACHRACH: You ought not to instruct them now, if the court please, I respectfully suggest.

The COURT: I am instructing you now not to mix the jury up by trying to have them pass on——

Mr. BACHRACH: I take an exception to the court's ruling at this time. I have a right to state what I expect to show. You ought not to instruct——

The COURT: You have a right to think that I ought not to instruct them anyway. There is no difference that I see——

Mr. BACHRAC-: I think in any event that you ought not to instruct, in any event, the jury, but even if you do you ought
110 not to instruct now before I can put in my defence and state what my case is.

The COURT: All right. The only trouble is you may get the jury a little confused on what they are passing on, and I don't want them to do that——

Mr. BACHRACH: I understand that the Court said that. I take an exception.

The COURT: To pass on the question before it, I am satisfied, whatever it is, if they pass on that question and not a lot of other questions.

Mr. BACHRACH: I take an exception to the Court's talking to them now.

111 16. The District Court — in admitting certain improper and illegal testimony, elicited from the witness, Irene Bodi on her direct examination by the Government as follows:

"Q. Was your father ever in America?

Mr. BACHRACH: I object, because it does not appear that she knows.

Mr. ABBOTT:

Q. Do you know whether or not your father ever was in America?

Mr. BACHRACH: I object. She cannot know. It may have been before she was born.

The COURT: Let her answer.

Mr. BACHRACH: Exception.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

A. Never was."

112 17. The District Court erred in denying the motion made on behalf of said defendant, Louis Ullman, at the close of the evidence for the prosecution and before any evidence had been heard on behalf of the defendants, to direct the jury to find him, the said Louis Ullman not guilty.

Said motion was urged upon the following grounds:

1. "The allegation in the indictment that Irene Bodi was an alien woman has not been sufficiently proved.

2. The evidence in said cause is insufficient to support a verdict of guilty.
3. The evidence fails to show that South Chicago, mentioned in the indictment, is a city; and
4. The Act of Congress on which the indictment is based is unconstitutional and invalid."

To the denial by the District Court of said motion to direct the jury to find the said Louis Ullman, not guilty, the defendant, Louis Ullman, by his counsel then and there duly excepted.

113 18. The District Court erred in refusing to admit proper and legal evidence offered on behalf of the defendant, Ullman, from the witness Louis Ullman on his direct examination as follows:

"When I came in she (Irene Bodi) was there already. That was in November, last November, 1907, in the saloon at 9216 Harbor Avenue, South Chicago.
Q. Now, did you talk to her?
A. Yes sir.
Q. In what language?
A. German.
Q. What did you say to her and what did she say to you?
A. When I bought that place at night, when I took——

Mr. ABBOTT: I object to that.
Mr. BACHRACH: What did you say to her?
Mr. PARKIN: Don't answer the question. I object, unless she states what the conversation is about.
Mr. BACHRACH: I am waiting for the court. There is an objection, if the court please, to the question.
The COURT: What is the question?
Mr. BACHRACH: Read the question.
(Whereupon the question and answer were read.)
Mr. PARKIN: It led up to the point of a conversation between the witness and Irene Bodi. Now, he wants to tell the conversation and I apprehend that the conversation is about something that is
114 objectionable, something that is not proper for the jury to consider.
The COURT: Well, I think I will sustain the objection. Note your exception.
Mr. BACHRACH: Exception.
To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.
Mr. BACHRACH: I offer to show, if the court please, that in that conversation, fixing the time and place in November, when he met her there at that pl. ——
The COURT: Yes, in 1907.
Mr. BACHRACH: In 1907. That in that conversation he asked her how long she had been in this country, and she told him three and a half years, in the German language.
The COURT: I still sustain the objection.
Mr. BACHRACH: They have not objected to it.

Mr. PARKIN: I object as showing or attempting to show—it is not a proper matter for the jury to consider.

The COURT: I sustain the objection. The question is not proper at all. Your offer to prove anything don't cut any figure, but your question cuts a figure.

Mr. BACHRACH: My question was a conversation.

The COURT: The jury must not consider that, it is not before the jury at all.

115 Mr. BACHRACH: I take an exception to the court's ruling. To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

The COURT: The question is whether he kept her there as the indictment charges. The law is——

Mr. BACHRACH: I respectfully object to the court——

The COURT: You may object to anything and except. I want the jury to understand the thing they are trying; they are not trying the law; your duty is to enforce the law as it is written, and if you don't like it you have got to enforce it, if it is proved beyond a reasonable doubt, everything against the defendant, as charged in the indictment.

Mr. BACHRACH: I take an exception to the last remarks of the court at this time.

The COURT: Yes.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: I have nothing further to ask the witness.

116 19. The District Court erred in denying the motion made on behalf of Louis Ullman at the close of all the evidence in the case, to direct the jury to find him, the said Louis Ullman not guilty.

Said motion was urged upon the following grounds:

1. The allegation in the indictment that Irene Bodi was an alien woman has not been sufficiently proved.

2. The evidence in said cause is insufficient to support a verdict of guilty.

3. The Government has failed to prove that South Chicago, mentioned in the indictment, is a city, as charged.

4. The Act of Congress upon which the indictment is based is unconstitutional and invalid.

To the denial by the District Court of said motion to direct the jury to find him, the said Louis Ullman, not guilty the defendant, Louis Ullman by his counsel then and there duly excepted.

Wherefore the said Louis Ullman, by reason of the errors aforesaid, prays that the said judgment and sentence against and upon him the said Louis Ullman may be reversed and held for naught.

LOUIS ULLMAN,
By BENJAMIN C. BACHRACH,
His Attorney.

117 Endorsed: 4069 In the District Court of the United States for the Northern District of Illinois Eastern Division. United States of America *vs.* Joseph Keller and Louis Ullman. No.

4069. Assignment of Errors of Louis Ullman. Filed this 1st day of December, A. D. 1908. T. C. MacMillan, Clerk. Messrs. Levey and Bachrach for Defendant. W. J. Snyder Law Stenographer, 1301 Ashland Bldg., Chicago. Telephone Central 5451.

118 And afterwards, to wit, on the 1st day of December, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Assignment of Errors; same being in the words and figures following, to wit:

119 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES OF AMERICA
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Assignment of Errors.

And now comes the defendant, Joseph Keller, by Benjamin C. Bachrach, his attorney, and in connection with his petition for a writ of error, says that in the record and proceedings, and during the trial of the above entitled cause in the said District Court error has intervened to his prejudice, and this defendant here assigns the following errors, to wit:

1. The District Court erred in denying the motion in arrest of judgment made on behalf of said Joseph Keller.

2. The matters and things alleged in the indictment and in each and every count thereof, do not constitute an offense against the United States.

3. Each and every count of the indictment is insufficient,
120 because the matters and things in said indictment set forth do not constitute offenses cognizable in the District Court of the United States, and do not come within its power and jurisdiction.

4. The judgment and sentence in the above entitled cause are void, because the Act of Congress upon which said indictment in the above entitled cause is based, to wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is unconstitutional, invalid and void.

5. The judgment and sentence in the above entitled cause are void because that portion of the Act of Congress upon which the indictment in this case is based, to wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," in the words and

figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of
121 prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is not constitutionally within the jurisdiction of the courts of the United States, and the matters and things therein referred to are judicially cognizable by State tribunals only, and legislative action thereon is among the constitutionally reserved rights of the several States.

6. The judgment and sentence in the above entitled cause are void, because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the tenth amendment to the Constitution of the United States, which is as follows: "The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the states respectively or to the people."

7. The judgment and sentence in the above entitled cause
122 are void, because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the fifth amendment to the Constitution of the United States, which is as follows: "Nor be deprived of life, liberty or property without due process of law."

8. The judgment and sentence in the above entitled cause are void, because that portion of Section 3 of the Act of Congress of February 20th, 1907, entitled "An Act to Regulate the Immigration of Aliens into the United States," to wit: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she had entered the United States," is in violation of the fourteenth amendment to the Constitution of the United States.

8½. The judgment and sentence in the above entitled cause are void because that portion of Section 3 of the Act of Congress of February 20, 1907, entitled "An Act to regulate the immigration of aliens into the United States," to-wit: "or whoever shall keep, maintain, control, support or harbor in any house or other place for the purpose of prostitution or for any other immoral purpose any alien woman or girl within three years after she had entered the United States," is unconstitutional and void because the power to enact said portion of said Act of Congress of February 20, 1907, aforesaid, is not within the powers granted by the Constitution of the

United States, and, therefore, Congress had no power under the Constitution to enact said law.

9. The District Court erred in denying the motion for a
123 new trial made on behalf of Joseph Keller.

10. The District court erred in refusing to charge the jury on behalf of said Joseph Keller in manner and form as requested in said Defendant's Request 1, which said Defendant's Request 1 is as follows:

Defendant's Request 1.

The Court instructs the jury that in order to warrant a verdict of guilty against the defendant, the jury must be convinced by the evidence, beyond all reasonable doubt, of the following propositions:

1. That the defendant, Joseph Keller, kept, maintained, controlled, supported or harbored in a house of prostitution at 9216 Harbor Avenue, in the city of South Chicago, a certain alien woman.

2. That said alien woman at the time that said Joseph Keller kept, maintained, controlled, supported or harbored her in his said house (if the jury are convinced beyond all reasonable doubt from the evidence in this case that he, the said Joseph Keller did keep, maintain, control, support, or harbor said woman in his said house), was in the United States for a period of less than three years.

3. That said Joseph Keller, at the time he so kept, maintained, controlled, supported or harbored said alien woman, knew
124 that said alien woman at the time he, the said Joseph Keller (if he kept, maintained, controlled, supported and harbored her in his said house), had been in the United States for a period of less than three years.

And the Court instructs the jury that if the government has failed to prove any one of said propositions in this case beyond a reasonable doubt, or if the jury, after a consideration of all the evidence in the case beyond a reasonable doubt, or if the jury, after a consideration of all the evidence in the case, are not convinced beyond a reasonable doubt, of the truth of any one of said three propositions, the jury should find the defendant Joseph Keller not guilty.

Said Defendant's Request 1 contains a correct statement of the law which was applicable to the case against Joseph Keller.

125 11. The District Court erred in refusing to charge the jury on behalf of said Joseph Keller in manner and form as requested in Defendant's Request 2, which said Defendant's Request 2 is as follows:

Defendant's Request 2.

The presumption of innocence in this case means that the law presumes that the defendant, Joseph Keller, did not know that Irene Bodi had not been in the United States of America for three years at the time he, the said Keller permitted the said Irene Bodi to practice prostitution at Number 9216 Harbor Avenue, South Chicago, and this presumption, as so explained to you, should continue and

prevail in the minds of the jury throughout the trial and during the deliberations of the jurors in the jury room in such a way that unless the jury are convinced from the evidence, beyond all reasonable doubt, that Joseph Keller at the time that the said Irene Bodi practiced prostitution at Number 9216 Harbor Avenue, knew that said Irene Bodi had been in the United States for less than three years, the jury should find the defendant not guilty.

Said Defendant's Request 2 contains a correct statement of the law which was applicable to the case against Joseph Keller.

126 12. The District Court erred in refusing to charge the jury on behalf of said Joseph Keller in manner and form as requested in Defendant's Request 3, which said Defendant's Request 3 is as follows:

Defendant's Request 3.

The court instructs the jury that even if the jury should believe, from the evidence, beyond all reasonable doubt, that the defendant, Joseph Keller, knowingly kept, or maintain-, or controlled, or supported, or harbored in a house of prostitution at Number 9216 Harbor Avenue in the city of South Chicago, one Irene Bodi for the purpose of prostitution, and that said Irene Bodi was an alien woman, and at the time of her practicing prostitution in said house as aforesaid she had been in the United States for less than three years, nevertheless unless the jury are also convinced beyond all reasonable doubt from the evidence, that at the time the said Irene Bodi practiced prostitution at said Number 9216 Harbor Avenue, as aforesaid, the said Joseph Keller knew that said Irene Bodi had been in the United States for less than three years, you should find the defendant, Joseph Keller, not guilty.

Said Defendant's Request 3 contains a correct statement of the law which was applicable to the case against Joseph Keller.

127 13. The District Court erred in using the following language in the charge to the jury:

"You are to pass upon the facts whether or not the defendants harbored, as charged therein, this woman here, and whether she was an alien and had been in this country less than three years; and did they harbor her? Did they hold her? Did they keep her in a house of ill-fame? Was it a house of ill-fame? All the questions of fact are for you. Was it a house of ill-fame, and had she been here less than three years? It don't make any difference whether they knew it or not. The law presumes that they are guilty, if the rest is true, as charged in the indictment, whether they knew it or not, that is, if you believe that they are guilty, proved guilty beyond all reasonable doubt."

Said portion of the charge was then and there objected to by the said defendant, Joseph Keller, as follows:

"Mr. BACHRACH: I except to that portion of the court's charge wherein the court said, "It don't make any difference whether they knew it or not."

"The COURT: Of course you will except to that."

128 14. The District Court erred in using the following language in the charge to the jury:

"You must consider the question of intent. That is a question of fact for you to consider, but you must not consider whether they knew or not. Now simply consider, did they do the things charged in the indictment as therein charged."

Said portion of the charge was then and there objected to by the said defendant, Joseph Keller, as follows:

"Mr. BACHRACH: I except to that portion of the court's charge wherein the court told the jury, "You must consider the question of intent, but not whether they knew it or not."

"The COURT: Yes, except to that."

129 15. The District Court erred in making improper remarks in the presence and the hearing of the jury, prejudicial to the defendant, Joseph Keller, while counsel for the defendant was making the opening statement to the jury as follows:

"The defense will be that at that time and at no time while they were there did either of them know, that is the fact that that woman had not been in the United States three years.

Mr. ABBOTT. I don't think that ought to come up here, your honor.

The COURT: I will hold the same as I did in the other case. I instruct the jury it makes no difference——

Mr. BACHRACH: You ought not to instruct them now, if the court please, I respectfully suggest.

The COURT: I am instructing you now not to mix the jury up by trying to have them pass on——

Mr. BACHRACH: I take an exception to the court's ruling at this time. I have a right to state what I expect to show. You ought not to instruct——

The COURT: You have a right to think that I ought not to instruct them anyway. There is no difference that I see——

Mr. BACHRACH: I think in any event that you ought not to instruct, in any event, the jury, but even if you do you ought

130 not to instruct now before I can put in my defence and state what my case is.

The COURT: All right. The only trouble is you may get the jury a little confused on what they are passing on, and I don't want them to do that——

Mr. BACHRACH: I understand that the Court said that. I take an exception.

The COURT: To pass on the question before it, I am satisfied, whatever it is, if they pass on that question and not a lot of other questions.

Mr. BACHRACH: I take an exception to the Court's talking to them now.

131 16. The District Court in admitting certain improper and illegal testimony, elicited from the witness, Irene Bodi on her direct examination by the Government as follows:

"Q. Was your father ever in America?

Mr. BACHRACH: I object, because it does not appear that she knows.

Mr. ABBOTT:

Q. Do you know whether or not your father ever was in America?

Mr. BACHRACH: I object. She cannot know. It may have been before she was born.

The COURT: Let her answer.

Mr. BACHRACH: Exception.

To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

A. Never was."

132 17. The District Court erred in denying the motion made on behalf of said defendant, Joseph Keller, at the close of the evidence for the prosecution and before any evidence had been heard on behalf of the defendants, to direct the jury to find him, the said Joseph Keller not guilty.

Said motion was urged upon the following grounds:

1. "The allegation in the indictment that Irene Bodi was an alien woman has not been sufficiently proved.

2. The evidence in said cause is insufficient to support a verdict of guilty.

3. The evidence fails to show that South Chicago, mentioned in the indictment, is a city; and

4. The Act of Congress on which the indictment is based is unconstitutional and invalid."

To the denial by the District Court of said motion to direct the jury to find the said Joseph Keller not guilty, the defendant, Joseph Keller, by his counsel then and there duly excepted.

133 18. The District Court erred in refusing to admit proper and legal evidence offered on behalf of the defendant, Keller, from the witness Joseph Keller on his direct examination as follows:

"Mr. BACHRACH:

Q. From November, the first of November, 1907, till the 25th of June, 1908, did you know that Irene Bodi had not been in the United States three years?

Mr. PARKIN: Wait a minute. Don't answer that question. Objection.

The COURT: Objection sustained.

Mr. BACHRACH: Exception.

To which said ruling of the court the defendant, Joseph Keller by his counsel then and there duly excepted.

Mr. BACHRACH: I offer to show by this witness that he did not know it during any of that time.

Mr. PARKIN: I object to the offer.

The COURT: Objection sustained.
Mr. BACHRACH: Exception.
To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: Did you have any conversation with Irene Bodi in the month of November when you took possession of that place?
A. Yes sir.
134 Q. Wait a minute—at 9216 Harbor Avenue, South Chicago?
A. Yes sir.
Q. In what language was that conversation?
A. Mr. Ullman spoke to her in German in my presence.

Mr. PARKIN: Wait a minute. What are you talking about?
Mr. BACHRACH: I will ask it.

Q. Mr. Ullman was conversing there?
A. Yes sir, in my presence.
Q. You heard them?
A. Yes sir, we were talking together——
Q. Just pay attention to the question, don't be so fast. Tell what that conversation was?

Mr. PARKIN: I object to that for the same reason. It is the same subject.
The COURT: Objection sustained.
Mr. BACHRACH: Exception.
To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

Mr. BACHRACH: I offer to show, if the court please, that in that conversation the witness, Irene Bodi, in German, stated to Mr. Ullman in the presence of this witness, that she had been in the
135 United States three and a half years.
Mr. PARKIN: Objection.
The COURT: Objection sustained.
Mr. BACHRACH: Exception.
To which ruling of the court the defendants and each of them by their counsel then and there duly excepted.

136 19. The District Court erred in denying the motion made on behalf of Joseph Keller at the close of all the evidence in the case, to direct the jury to find him, the said Joseph Keller not guilty.
Said motion was urged upon the following grounds:
1. The allegation in the indictment that Irene Bodi was an alien woman has not been sufficiently proved.
2. The evidence in said cause is insufficient to support a verdict of guilty.
3. The Government has failed to prove that South Chicago, mentioned in the indictment, is a city, as charged.
4. The Act of Congress upon which the indictment is based is unconstitutional and invalid.

To the denial by the District Court of said motion to direct the jury to find him, the said Joseph Keller not guilty the defendant, Joseph Keller, by his counsel then and there duly excepted.

Wherefore the said Joseph Keller, by reason of the errors aforesaid, prays that the said judgment and sentence against and upon him the said Joseph Keller may be reversed and held for naught.

JOSEPH KELLER,
By BENJAMIN C. BACHRACH,
His Attorney.

137 Endorsed: 4069 In the District Court of the United States for Northern District of Illinois Eastern Division. United States of America *vs.* Joseph Keller and Louis Ullman. No. 4069. Assignment of Errors. of Joseph Keller. Filed this 1st day of December, A. D. 1908. T. C. MacMillan, Clerk. Messrs. Levey and Bachrach for Defendant. W. J. Snyder Law Stenographer, 1301 Ashland Bldg., Chicago. Telephone Central 5451.

138 And afterwards, to wit, on the 1st day of December, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Petition for Writ of Error; same being in the words and figures following, to wit:

139 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES OF AMERICA
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Petition for Writ of Error.

And now comes the said Joseph Keller, your petitioner, one of the defendants in the above entitled cause, and respectfully shows that a verdict of guilty was returned against him by a jury in the above entitled cause, and that judgment and sentence were pronounced upon the second day of November, A. D., 1908, by virtue of which said verdict, judgment and sentence he, your petitioner, was convicted of an infamous crime and sentenced to a term of imprisonment in the Penitentiary at Leavenworth, Kansas, for a term of one and one-half years and to pay the costs of the prosecution. And your petitioner respectfully shows that in said judgment and the proceedings had prior thereunto in the above entitled cause, certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear in the Assignment of Er-
140 rors, which is filed together with this petition.

Wherefore your petitioner, the said Joseph Keller, prays that a writ of error may issue in his behalf to said District Court, returnable to the next term of the Supreme Court of the United States of America for correcting the errors so complained of; that said writ of error may be made a supersedeas and that your peti-

tioner may be admitted to bail, pending the determination of the same, and that all further proceedings in said District Court be suspended and stayed, and that all further necessary orders and processes may be made to the end that the errors complained of may be corrected by said Supreme Court of the United States, and that said judgment and sentence may be set aside and held for naught.

Your petitioner further shows that he was jointly indicted and tried in the above entitled cause in said District Court with one Louis Ullman, and that a joint verdict of guilty was returned by the jury against your petitioner, and the said Louis Ullman, in the above entitled cause; and that a judgment and sentence, in all particulars like unto the said judgment and sentence entered against and pronounced upon your petitioner, was entered and pronounced
141 upon said Louis Ullman on the said fourth day of November, A. D., 1908, in said District Court in the above entitled cause; and that but one bill of exceptions has been filed in said District Court on behalf of your petitioner and the said Louis Ullman in the above entitled cause; and that said assignment of errors filed in said District Court on behalf of your petitioner is a duplicate of a certain assignment of errors, which has been filed in said District Court, together with a petition for a writ of error from said Supreme Court of the United States by said Louis Ullman, in which assignment of errors and petition for a writ of error so filed in said District Court on behalf of Louis Ullman, said Louis Ullman also prays that said judgment entered against him in said District Court may also be reversed and held for naught by said Supreme Court of the United States of America.

Your petitioner, therefore, prays that an order may be entered in his behalf, directing the Clerk of said District Court to make return of the two several writs of error to be granted in this case on behalf of your petitioner, Joseph Keller, and on behalf of said Louis Ullman, by transmitting to said Supreme Court of the United States of America a single true copy of the record of the above
142 entitled cause, said bill of exceptions, said two several assignments of error, filed in the District Court on behalf of your petitioner and said Louis Ullman, said two several petitions for writs of error, filed in said District Court on behalf of your petitioner and said Louis Ullman, and of the proceedings had in said District Court in said case, numbered 4069, necessary to the hearing in the Supreme Court of the United States of America of said two several writs of error.

JOSEPH KELLER,
By BENJAMIN C. BACHRACH,
His Attorney.

143 Endorsed: 4069. In the District Court of the United States for the Northern District of Illinois Eastern Division. United States of America *vs.* Joseph Keller and Louis Ullman. No. 4069. Petition for writ of Error. Filed this 1st day of December, 1908. T. C. MacMillan, Clerk. Messrs Levey and Bachrach for defendant. W. J. Snyder Law Stenographer, 1301 Ashland Bldg., Chicago. Telephone Central 5451.

144 And afterwards, to wit, on the 1st day of December, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, a Petition for Writ of Error; same being in the words and figures following, to wit:

145 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 4069.

UNITED STATES OF AMERICA
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Petition for Writ of Error.

And now comes the said Louis Ullman, your petitioner, one of the defendants in the above entitled cause, and respectfully shows that a verdict of guilty was returned against him by a jury in the above entitled cause, and that judgment and sentence were pronounced upon the second day of November, A. D., 1908, by virtue of which said verdict, judgment and sentence he, your petitioner, was convicted of an infamous crime, and sentenced to a term of imprisonment in the Penitentiary at Leavenworth, Kansas, for a term of one and one half years and to pay the costs of the prosecution. And your petitioner respectfully shows that in said judgment and the proceedings had prior thereunto in the above entitled cause, certain errors were committed to the prejudice of your petitioner, all of which will more in detail appear in the Assign-
146 ment of Errors, which is filed together with this petition.

Wherefore your petitioner, the said Louis Ullman, prays that a writ of error may issue in his behalf to said District Court, returnable to the next term of the Supreme Court of the United States of America for correcting the errors so complained of; that said writ of error may be made a supersedeas and that your petitioner may be admitted to bail, pending the determination of the same, and that all further proceedings in said District Court be suspended and stayed, and that all further necessary orders and processes may be made to the end that the errors complained of may be corrected by said Supreme Court of the United States, and that said judgment and sentence may be set aside and held for naught.

Your petitioner further shows that he was jointly indicted and tried in the above entitled cause in said District Court with one Joseph Keller, and that a joint verdict of guilty was returned by the jury against your petitioner, and the said Joseph Keller, in the above entitled cause; and that a judgment and sentence, in all particulars like unto the said judgment and sentence entered
147 against and pronounced upon your petitioner, was entered and pronounced upon said Joseph Keller on the said fourth day of November, A. D., 1908, in said District Court in the above

entitled cause; and that but one bill of exceptions has been filed in said District Court on behalf of your petitioner and the said Joseph Keller in the above entitled cause; and that said assignment of errors filed in said District Court on behalf of your petitioner is a duplicate of a certain assignment of errors, which has been filed in said District Court, together with a petition for a writ of error from said Supreme Court of the United States by said Joseph Keller, in which assignment of errors and petition for a writ of error so filed in said District Court on behalf of Joseph Keller, said Joseph Keller also prays that said judgment entered against him in said District Court may also be reversed and held for naught by said Supreme Court of the United States of America.

Your petitioner, therefore, prays that an order may be entered in his behalf, directing the Clerk of said District Court to make return of the two several writs of error to be granted in this case on behalf of your petitioner, Louis Ullman, and on behalf of said Joseph Keller,

148 by transmitting to said Supreme Court of the United States of America a single true copy of the record of the above entitled cause, said bill of exceptions, said two several assignments of error, filed in the District Court on behalf of your petitioner and said Joseph Keller, said two several petitions for writs of error, filed in said District Court on behalf of your petitioner and said Joseph Keller, and of the proceedings had in said District Court in said case, numbered 4069, necessary to the hearing in the Supreme Court of the United States of America of said two several writs of error.

LOUIS ULLMAN,
By BENJAMIN C. BACHRACH,
His Attorney.

149 Endorsed: 4069. In the District Court of the United States for the Northern District of Illinois Eastern Division. United States of America *vs.* Joseph Keller and Louis Ullman. No. 4069. Petition for writ of Error. Filed this 1st day of December, 1908. T. C. MacMillan, Clerk. Messrs. Levey and Bachrach for defendant. W. J. Snyder Law Stenographer, 1301 Ashland Bldg., Chicago. Telephone Central 5451.

150 And afterwards, to wit, on the 7th day of December, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Let a writ of error issue from the Supreme Court of the United States of America to the United States District Court of the Eastern Division for the Northern District of Illinois as prayed for in the petition for a writ of error by Louis Ullman and it is hereby ordered

that said writ of error issue without prejudice to the said plaintiff in error to move hereafter for supersedeas and bail herein.

And the clerk of said District Court is hereby directed to make return of said two several writs of error in this case on behalf of Joseph Keller and Louis Ullman by transmitting to the Supreme Court of the United States of America a single true copy of said record in the above entitled cause, said bill of exceptions, said two several assignments of error, said two several petitions for writs of error, and of the proceedings had in said District Court in the above entitled cause, Numbered 4069, necessary to the hearing in said Supreme Court of the United States of America of said two several writs of error.

151 And afterwards, to wit, on the 7th day of December, A. D. 1908, the following order was had and entered of record in said cause, to wit:

4069.

THE UNITED STATES
vs.
JOSEPH KELLER and LOUIS ULLMAN.

Let a writ of error issue from the Supreme Court of the United States of America to the United States District Court of the Eastern Division for the Northern District of Illinois as prayed for in the petition for a writ of error by Joseph Keller, and it is hereby ordered that said writ of error issue without prejudice to the said plaintiff in error to move hereafter for supersedeas and bail herein.

And the clerk of said District Court is hereby directed to make return of said two several writs of error in this case on behalf of Joseph Keller and Louis Ullman by transmitting to the Supreme Court of the United States of America a single true copy of said record in the above entitled cause, said bill of exceptions, said two several assignments of error, said two several petitions for writs of error, and of the proceedings had in said District Court in the above entitled cause, Numbered 4069, necessary to the hearing in said Supreme Court of the United States of America of said two several writs of error.

152 And afterwards, to wit, on the 8th day of December, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Appeal Bond; same being in the words and figures following to wit:

153 Know all men by these presents: That we Joseph Keller as principal, and Benjamin C. Bachrach and Arthur C. Bachrach, as sureties, are held and firmly bound unto the United States in the full and just sum of Two Hundred and Fifty Dollars ($250) to be paid to the said United States, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 8th day of December, in the year of Our Lord, 1908.

Whereas lately, at a term of the District court of the United States, in and for the Northern District of Illinois, Eastern Division, in a suit depending in said court between the United States and said Joseph Keller a judgment was rendered against the said Joseph Keller and the said Joseph Keller having obtained a writ of error and filed a copy thereof in the Clerk's Office of said Court to reverse said judgment in the aforesaid suit, and a citation directed to the said United States, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Joseph Keller shall prosecute his said writ of error to effect an-answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOSEPH KELLER, [SEAL.]
By BENJAMIN C. BACHRACH.
His Att'y in Fact.
BENJAMIN C. BACHRACH. [SEAL.]
ARTHUR C. BACHRACH. [SEAL.]

Sealed and delivered in presence of
——— ———.

Approved by:
S. H. BETHEA,
District Judge.

154 Endorsed: No. 4069 United States *vs.* Joseph Keller and Louis Ullman. Filed Dec. 8, 1908 at — o'clock — M. T. C. MacMillan, Clerk. Bond on Appeal.

155 And afterwards, to wit, on the 8th day of December, A. D. 1908, there was filed in the Clerk's Office of said Court, in the above entitled cause, an Appeal Bond; same being in the words and figures following, to wit:

156 Know all men by these presents: That we Louis Ullman as principal, and Benjamin C. Bachrach and Arthur C. Bachrach, as sureties, are held and firmly bound unto the United States in the full and just sum of Two Hundred and Fifty Dollars ($250), to be paid to the said United States, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 8th day of December, in the year of Our Lord, 1908.

Whereas, lately at a term of the District court of the United States, in and for the Northern District of Illinois, Eastern Division, in a suit depending in said court between the United States and said Louis

Ullman a judgment was rendered against the said Louis Ullman and the said Louis Ullman having obtained a writ of error and filed a copy thereof in the Clerk's Office of said Court to reverse said judgment in the aforesaid suit, and a citation directed to the said United States, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Louis Ullman shall prosecute his said writ of error to effect an- answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

LOUIS ULLMAN, [SEAL.]
By BENJAMIN C. BACHRACH,
His Att'y in Fact.
BENJAMIN C. BACHRACH. [SEAL.]
ARTHUR C. BACHRACH. [SEAL.]

Approved by:
S. H. BETHEA,
District Judge.

157 Endorsed: No. 4069 United States *vs.* Joseph Keller and Louis Ullman. Filed Dec. 1908 at — o'clock — M. T. C. MacMillan, Clerk. Bond on Appeal.

158 In the District Court of the United States, for the Northern District of Illinois, Eastern Division.

I, T. C. MacMillan, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record in Case No. 4069, wherein The United States of America is the Defendant and Joseph Keller and Louis Ullman, are the Defendants, as same appears from the records and files in said cause, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office at Chicago, in said District, this 8th day of December, A. D. 1908.

[Seal of Dist. Court U. S. Northern Dist. Illinois. 1855.]

T. C. MACMILLAN, *Clerk.*

159 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The President of the United States to the Honorable Judge of the District Court of the United States for the Northern District of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court before you or some of you, between the United States, Plaintiff. and Louis Ull-

man Defendant, manifest error hath happened, to the great damage of the said Defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of December, in the year of our Lord, one thousand nine hundred and eight.

[Seal of Dist. Court U. S. Northern Dist. Illinois. 1855.]

T. C. MACMILLAN,
Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Allowed by
S. H. BETHEA,
District Judge.

[Endorsed:] Filed Dec. 7, 1908, at — o'clock — M. T. C. MacMillan, Clerk.

160 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

In obedience to the within writ and the said certain order of the Honorable Sol H. Bethea, Judge of the District Court of the United States of America, Northern District of Illinois Eastern Division entered in said District Court of the United States of America on the 7th day of December, A. D., 1908, whereby the Clerk of said United States District Court for the Northern District of Illinois, Eastern Division, was directed to make return of said two several writs of error, to wit: a certain writ of error wherein said Joseph Keller impleaded with Louis Ullman is the plaintiff in error and the United States of America is the defendant in error, and a certain other writ of error wherein the said Louis Ullman impleaded with Joseph Keller is the plaintiff in error and the United States of America is the defendant in error, by transmitting to the said Supreme Court of the United States of America a single true copy of the record, said bill of exceptions, said two several assignments of error, by said Joseph Keller and said Louis Ullman, respectively, said two several petitions for writs of error by said Joseph Keller and said
161 Louis Ullman, respectively, and of the proceedings had in said District Court in for foregoing entitled case, numbered 4069, lately pending in said District Court of the United States,

wherein the United States of America was plaintiff and said Joseph Keller and said Louis Ullman were defendants, necessary to the hearing in the Supreme Court of the United States of America of said two several writs of error, I herewith transmit to the Supreme Court of the United States of America a single true and complete transcript of the record, said bill of exceptions, said two several assignments of error, said two several petitions for writ of error, and of the proceedings had in said District Court in the foregoing entitled cause numbered 4069, lately pending in said District Court, wherein the said United States of America was plaintiff and said Joseph Keller and Louis Ullman were defendants, this 8th day of December, A. D., 1908.

[Seal of Dist. Court U. S. Northern Dist. Illinois. 1855.]

T. C. MacMILLAN,
Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

162 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The President of the United States to the Honorable Judge of the District Court of the United States for the Northern District of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court before you or some of you, between the United States, Plaintiff, and Joseph Keller, Defendant, manifest error hath happened, to the great damage of the said Defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington within thirty days from the date hereof; that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of December, in the year of our Lord, one thousand nine hundred and eight.

[Seal of Dist. Court U. S. Northern Dist. Illinois. 1855.]

T. C. MacMILLAN,
Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Allowed by
S. H. BETHEA,
District Judge.

[Endorsed:] Filed Dec. 7, 1908, at — o'clock — M. T. C. MacMillan, Clerk.

163 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

In obedience to the within writ and the said certain order of the Honorable Sol H. Bethea, Judge of the District Court of the United States of America, Northern District of Illinois, Eastern Division, entered in said District Court of the United States of America on the 7th day of December, A. D., 1908, whereby the Clerk of said United States District Court for the Northern District of Illinois, Eastern Division, was directed to make return of said two several writs of error, to wit: a certain writ of error wherein Joseph Keller impleaded with Louis Ullman is the plaintiff in error and the United States of America is the defendant in error, and a certain other writ of error wherein the said Louis Ullman impleaded with Joseph Keller is the plaintiff in error and the United States of America is the defendant in error, by transmitting to the said Supreme Court of the United States of America a single true copy of the record, said bill of exceptions, said two several assignments of error, by said Joseph Keller and said Louis Ullman, respectively, said two several petitions for writs of error by said Joseph Keller and said Louis Ullman,
164 respectively, and of the proceedings had in said District Court in for foregoing entitled case, numbered 4069, lately pending in said District Court of the United States, wherein the United States of America was plaintiff and said Joseph Keller and said Louis Ullman were defendants, necessary to the hearing in the Supreme Court of the United States of America of said two several writs of error, I herewith transmit to the Supreme Court of the United States of America a single true and complete transcript of the record, said bill of exceptions, said two several assignments of error, said two several petitions for writs or error, and of the proceedings had in said District Court in the foregoing entitled cause numbered 4069, lately pending in said District Court, wherein the said United States of America was plaintiff and said Joseph Keller and said Louis Ullman were defendants, this 8th day of December, A. D., 1908.

[Seal of Dist. Court U. S. Northern Dist. Illinois. 1855.]

T. C. MACMILLAN,
Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

165 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Joseph Keller is Plaintiff In Error and you are Defendant in Error, to show cause if any there be why the judgment rendered against the said De-

fendant in Error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be shown to the parties in that behalf.

Witness, the Honorable Solomon H. Bethea, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, this seventh day of December, in the year of our Lord one thousand nine hundred and eight.

S. H. BETHEA,
District Judge.

I accept service of this citation this 7th day of December, A. D. 1908.

EDWIN W. SIMS,
United States Attorney.

[Endorsed:] Filed Dec. 7, 1908 at — o'clock — M. T. C. MacMillan, Clerk.

166 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Louis Ullman is Plaintiff In Error and you are Defendant in Error, to show cause if any there be why the judgment rendered against the said Defendant in Error as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be shown to the parties in that behalf.

Witness, the Honorable Solomon H. Bethea, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, this seventh day of December, in the year of our Lord one thousand nine hundred and eight.

S. H. BETHEA,
District Judge.

I accept service of this citation this 7th day of December, A. D. 1908.

EDWIN W. SIMS,
United States Attorney.

[Endorsed:] Filed Dec. 7, 1908 at — o'clock — M. T. C. MacMillan, Clerk.

Endorsed on cover. File No. 21,449. N. Illinois D. C. U. S. Term No. 653. Joseph Keller, plaintiff in error, *vs.* the United States. File No. 21,450. Term No. 654. Louis Ullman, plaintiff in error, *vs.* the United States. Filed December 18th, 1908. File Nos. 21,449 and 21,450.

Office Supreme Court, U. S.
FILED.
DEC 19 1908
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 653.

JOSEPH KELLER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

No. 654.

LOUIS ULLMAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION—HON. S. H. BETHEA, JUDGE PRESIDING.

MOTION TO ADVANCE.

JOSEPH KELLER,
LOUIS ULLMAN,
Plaintiffs in Error,
Per BENJAMIN C. BACHRACH,
Their Attorney.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 653.

JOSEPH KELLER, PLAINTIFF IN ERROR,

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LOUIS ULLMAN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION—HON. S. H. BETHEA, JUDGE PRESIDING.

MOTION TO ADVANCE.

Now come the said Louis Ullman and Joseph Keller, plaintiffs in error in the above-entitled causes, by Benjamin C. Bachrach, their attorney, and move this court to advance the hearing and consideration of said causes and to fix an early date for oral argument of said causes upon the following grounds:

1. Said plaintiffs in error were convicted under an indictment brought under a portion of the law of Congress, approved in February, 1908, whereby it was made a felony to maintain, keep, harbor, support, etc., in a place of prostitution an alien woman within three years after she shall have entered the United States, and said plaintiffs in error are

now serving a sentence of eighteen months' imprisonment, each, in the penitentiary at Leavenworth, Kansas.

2. Said plaintiffs in error are absolutely without funds and are unable to furnish bail, even if they should be admitted to bail.

3. If these cases came on for hearing in the regular manner the sentences now being served by said plaintiffs in error would be finished before the decision by this court.

4. The only point to be argued by the plaintiffs in error to this court, in the event that said causes are advanced, is the claim by plaintiffs in error that that portion of the law under which the plaintiffs in error were sentenced to the penitentiary at Leavenworth, Kansas, is unconstitutional and invalid.

5. That there are now pending in the District Court of the United States for the Northern District of Illinois, Eastern Division, undetermined, a large number of cases brought for the violation of that portion of the immigration laws which forbids the maintaining, keeping, harboring, supporting, etc., in a place of prostitution of an alien woman within three years after she shall have entered the United States, and if said law is unconstitutional it will not be necessary to try said other causes now pending.

In support of this motion counsel for plaintiffs in error offer the affidavit of Thomas H. Currier, deputy United States marshal for the northern district of Illinois, to the effect that he, said Currier, delivered said plaintiffs in error to the penitentiary at Leavenworth, Kansas, where they are now confined.

I am authorized by the Solicitor General to say that the Government concurs in this motion.

JOSEPH KELLER,
LOUIS ULLMAN,
Plaintiffs in Error,
Per BENJAMIN C. BACHRACH,
Their Attorney.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

JOSEPH KELLER, *Plaintiff in Error,*
vs.
UNITED STATES OF AMERICA, *Defendant in Error.*

LOUIS ULLMAN, *Plaintiff in Error,*
vs.
UNITED STATES OF AMERICA, *Defendant in Error.*

STATE OF ILLINOIS,
County of Cook, ss:

Thomas H. Currier on oath states that he now is and for more than eight years last past has been one of the deputy United States marshals for the northern district of Illinois; that as such deputy United States marshal for the northern district of Illinois, eastern division, upon November 14, 1908, affiant, under and by virtue of a certain mittimus lately issued out of the District Court of the United States for the Northern District of Illinois, Eastern Division, in the case of The United States *vs.* Louis Ullman and Joseph Keller, No. 4069, delivered the said Louis Ullman and said Joseph Keller, defendants in said cause, to the keeper of the penitentiary at Leavenworth, in the State of Kansas.

Affiant further states that on said 14th day of November said Louis Ullman and said Joseph Keller were imprisoned in said penitentiary at Leavenworth under and by virtue of the mittimus in said cause; and affiant further states, upon information and belief, that the said Louis Ullman and Joseph Keller are at the present time still imprisoned at said penitentiary at Leavenworth, in the State of Kansas.

THOS. H. CURRIER.

Subscribed and sworn to before me this 8th day of December, A. D. 1908.

CHAS. A. BUELL,
Deputy Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Office Supreme Court, U. S.
FILED.
JAN 20 1909
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1908.

JOSEPH KELLER,
Plaintiff in Error.
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

No. 653.
Error to the District Court of the United States for the Northern District of Illinois, Eastern Division.

Hon. K. M. Landis, Judge Presiding.

LOUIS ULLMAN,
Plaintiff in Error.
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

No. 654.

Brief and Argument for Plaintiffs in Error.

BENJAMIN C. BACHRACH,
Attorney for Plaintiffs in Error.

ELIJAH N. ZOLINE,
Of Counsel.

CHAMPLIN LAW PRINTING CO.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1908.

JOSEPH KELLER,
Plaintiff in Error.
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

No. 653.

Error to the District Court of the United States for the Northern District of Illinois, Eastern Division.

Hon. S. H. Bethea, Judge Presiding.

LOUIS ULLMAN,
Plaintiff in Error.
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

No. 654.

Brief and Argument for Plaintiffs in Error.

MAY IT PLEASE THE COURT:

These writs of error seek to review the judgment and sentence of the District Court for the Northern District of Illinois, Eastern Division, by which judgment and sentence the plaintiffs in error were each sentenced to be imprisoned in the penitentiary at Leavenworth, in the State of Kansas, for a period of eighteen months and to pay the costs of the prosecution, upon a verdict of guilty upon an indictment charging the plaintiffs in error with having in the City of South Chicago, in the State of Illinois, maintained, controlled, supported and harbored in a certain house for the purpose of prostitution a certain alien woman within three years after she, said woman, had entered the United States.

THE STATUTE.

The indictment was brought under a certain portion of section 3 of the Act of February 20, 1907, entitled "An Act to regulate the immigration of aliens into the United States." Said section 3 is herein set forth, and the portion of said section 3 upon which the indictment in the case at bar was based is italicised. Said section 3 is as follows:

> "Sec. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or *whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars,* and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act."

THE INDICTMENT.

The indictment consists of twenty-four counts. The pleader caused so many counts to be inserted so as to set forth the offense in all the different possible ways mentioned in the portion of the statute above italicised.

STATEMENT OF FACTS.

The evidence showed that both plaintiffs in error were the keepers of a house of prostitution at 9216 Harbor avenue, in South Chicago, in the State of Illinois, from November, 1907, until June, 1908; that during that time one Irene Bodi, a woman who landed in New York City in November, 1905, practiced prostitution in said house at 9216 Harbor avenue, South Chicago.

In the court below plaintiffs in error moved that judgment be arrested, after verdict, on the ground that the act of Congress "upon which the indictment in the case at bar is based, to-wit, that part of section 3 of the act of Congress of February 20, 1907, entitled 'An Act to regulate immigration of aliens into the United States' in the words and figures following: 'Or whoever shall keep, maintain, control, support or harbor in any house or other place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she had entered the United States,'" is unconstitutional and void (printed Tr., p. 16).

The motion in arrest of judgment was overruled by the court and plaintiffs in error excepted to the ruling of the court.

The ruling was assigned for error (printed Tr., pp. 40-42).

POINTS RELIED UPON.

The judgment and sentence in the above entitled cause are void, because the Act of Congress upon which said indictment in the above entitled cause is based, to-wit, that part of Section 3 of the Act of Congress of February 20th, 1907, entitled, "An Act to Regulate the Imigration of Aliens into the United States," in the words and figures following: "Or whoever shall keep, maintain, control, support or harbor, in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States," is unconstitutional and void, for the following reasons:

A.

Said portion of Section 3 of the Act of Congress above referred to is not constitutionally within the jurisdiction of the United States and the matters and things therein referred to are judicially cognizable by the state tribunals and legislation thereon is among the constitutionally reserved rights of the

several states; because the power to regulate vice and morality within a state, is within the exclusive power of the particular state

B.

Said portion of Section 3 of the Act of Congress above referred to is in violation of the tenth amendment to the constitution of the United States, which is as follows: "The powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states respectively or to the people."

C.

Said portion of Section 3 of the Act of Congress above referred to is in violation of a portion of the fifth amendment to the constitution of the United States, which is as follows: "No person shall be deprived of life, liberty or property without due process of law."

D.

Said portion of Section 3 of the Act of Congress above referred to is unconstitutional and void because the power to enact said portion of Section 3 of said Act of Congress is not within the powers granted by the constitution of the United States, and therefore Congress had no power, and has no power, under the constitution of the United States, to enact said law.

BRIEF OF ARGUMENT.

I.

The power to regulate vice and morality within the confines of a state is exclusively within the police power of the particular state and Congress has no power to pass laws of this nature affecting persons within the cofines of the State of Illinois.

The police power of the state was never surrendered to the federal government. It is reserved to the state to be exercised by it in regulating and directing its internal affairs. Each state has exclusive control of all matters pertaining to its own internal police. It can establish and regulate ferries; control the moving of vessels in its harbors, and enact health and inspection laws. Its jurisdiction over all persons and things within its confines is just as broad within its limits as the jurisdiction of any foreign nation, except insofar as that jurisdiction or power is surrendered to the Unted States or is restrained by the Constitution of the United States.

King v. *Am. Transp. Co.*, 14 Fed. Cases, 512.

It is fundamental that a state cannot divest itself of police power; this power is essential to its very existence, and it can neither surrender, abandon or barter it away.

All the powers of our national government are powers delegated to it by the states, and the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

In territory, not states of the United States, which territory is exclusively under the jurisdiction of the federal government, the police power over the internal affairs rests primarily in the federal government, but may be by the federal government administered through territorial agencies. The United States government has entire jurisdiction over persons and things there residing and situated, and Congress may pass such laws for the regulation of its internal affairs as it may deem necessary. This power is held by Congress by virtue of the second section of paragraph 3, of article IV of the Constitution of the United States, which is as follows:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," etc

It may there dignify misdemeanors into felonies. Within the confines of a state of the United States there is no warrant for the exercise of such authority by the federal government, and the federal government has no such authority within the territory and jurisdiction of a state and over citizens of such state. Within the confines of the state the police power in its broadest and fullest extent exists and operates under state control. It can be invoked without federal consent, and modified or relaxed without federal interference. This power is inherent in the state. It finds its field of operation confined within the limits of its territoral jursdiction. Whenever the federal government assumes to exercise police power within the confines of a state it invades the exclusive province and right of the state.

The state law reaches out and punishes offenses of the nature embraced in this clause of the act of Congress of

February 20, 1907. Under the police power of the state the state has ample authority to deal with the matter in such way as it may deem necessary and adequate, and the federal government has no power and no authority, corrective or visitorial, over the policy of the state in matters of police; certainly not to the extent of intruding by legislation upon matters within the exclusive jurisdiction of the state and affecting primarily the rights and liberties of its citizens and resting wholly within its police power as declared and adminstered under its laws.

The scope of federal police power, like that of the state, is limited to territory over which it has exclusive jurisdiction; and as well might the state attempt to control with its laws citzens and persons of another state as for the United States government to declare by its legislation what police regulation shall prevail in a state in a matter that is wholly within the police power of the particular state. Even where intoxicating liquors are carried from one state to another under the protection afforded by foreign and interstate commerce; nevertheless, under the police power a state can prohibit the sale of such intoxicating liquors within its boundaries.

It can exclude immigrants of a class dangerous to its laws and institutions. It can quarantine against persons and articles of commerce. It can license and regulate prostitution, or prohibit it by law. Its policy in these matters may be criticised, but not controlled nor overthrown by any other sovereignty, state or national. It is supreme in the exercise of its police power, and its policy in that behalf can be attacked only from within, and not from without.

It will probably be urged by counsel for the United States that, under the commerce laws of the constitution, Congress acquired all necessary power to enact that por-

tion of the act of February 20, 1907, here complained of, and it will probably be contended by counsel for the United States that Congress has jurisdiction over immigration, and can pass laws necessary to regulate the same and provide the terms upon which aliens may enter the United States and become citizens.

It is conceded by counsel for plaintiffs in error that Congress has jurisdiction over imigration, and may pass laws necessary to regulate the same, and may provide the terms upon which aliens may enter the United States and become citizens; but it is earnestly contended by counsel for plaintiff in error that when the alien is once landed within any state, the power of Congress to legislate concerning him is gone, except the power to pass laws to expel him.

But counsel for the United States may take the position here before this court that, before becoming a citizen, the alien is a ward of the nation, and, because he is a ward of the nation, under the commerce laws of the constitution, Congress has the power to legislate concerning him. This position, it is respectfully suggested, cannot be successfully maintained.

After the alien lands, he becomes amenable to the laws of the state in which he resides. Its police power reaches out and stretches around him to punish or protect him just the same as it does over a citizen. The laws of the state where he resides are invoked for his protection and for his punishment. The federal laws have to do with his *entering* this country, but once he is admitted their application and operation terminates. Under the federal law he may be deported for cause, yet to no punishment provided by federal law can he be subjected for criminal acts committed within and punished by the state. Under the state

law he must be tried and punished for his offense, the same as a citizen would be.

If these alien women and girls are the wards of the government, some measure of discipline should be exercised to reclaim and reform them, some police power of the government invoked to check their downward career. If the restricted police power of this government will not reach and regulate the conduct of these alien women, how can it fasten upon a citizen, amenable for his transgressions to the laws of the state, and punish the citizen for what in its first and in its last analysis is neither more nor less than a breach of a police regulation of the state?

It is abhorent to all sense of justice that the federal law should seize the citizen and punish him, but let the alien go free. Under a state law both would be equally punished. Under the federal law the paramour of the alien prostitute may be sent to the penitentiary for five years and made a felon, but the alien woman cannot be punished in any way except to be deported to the country from which she came. It would be contrary to all sense of justice for this court to hold that the federal government has police power to punish the citizen while for the want of police power the alien is treated with scrupulous leniency and forbearance. Under the police power of the state the state can enact laws which will punish both for the violation of its laws. The state will not discriminate in its punishment as between citizens and aliens. It is just and impartial, and the offense, rather than the persons committing it, controls and fixes the nature and extent of the punishment. The State of Illinois has already enacted laws for the punishment of offenses similar to that defined in section 3 of the immigration law, and that regardless of the citizenship or otherwise of the guilty party. Legis-

lating upon the matter is an exercise of the police power of the state, and the policy of the state expressed in its laws cannot be emasculated or superceded by any legislation originating elsewhere.

Even if the state failed to exercise its police power in prohibiting such offense, the federal government would be powerless to step in and enact laws in furtherance of its policy. The state can suppress, license or totally ignore the so-called social evil, and its policy in doing any of the three can be overthrown only by public sentiment from within the state, but not by any legislation from without the state. Moreover, the social relation is one that is peculiarly and exclusively within the jurisdicton of the state. The institution of marriage is a matter over which, or about which, the federal government has no jurisdiction or concern. To regulate it is not among its delegated powers, nor is it incidental to the exercise of any delegated power.

As to the institution of marriage and the policy with relation thereto, the states are supreme, and may pass such laws as they see fit, so long as they are not inhibited by constitutional restrictions. The United States government has no power to abridge, nullify or supplement such state legislation, or to interfere with or supplant by legislation the expressed policy of the state in relation of social or marital conditions and relations.

II.

Are alien women wards of the Government?

Under that portion of the act here complained of, if a citizen should install as his mistress an alien woman or girl within three years after she landed in the United States, such citizen would be liable to five years' imprison-

ment as a felon and a fine of five thousand dollars, whereas if he waited until after the alien woman shall have been in the United States for three years, the citizen would not be molested, at least by the federal government, notwithstanding the fact that the woman or girl could not become a citizen until after she had resided here at least five years.

This last statement is here made for the purpose of calling the court's attention to the fact that alien women are not the wards of the nation. If they were wards of the nation the nation would not relinquish nor abandon them before they became citizens. It cannot be that when this law was enacted by Congress the members of that body were of opinion that alien women who had resisted becoming prostitutes for three years after they had landed in the United States, even if they took up that profession thereafter would, by reason of their abstinence from the vice for three years, be regarded as desirable acquisitions to the United States. It would seem that the law complained of is subject to the criticism that it is class legislation, because it offers protection to certain persons in the same class while refusing protection to other persons in the same class. The alien women and girls are in no sense wards of the United States. The federal government has nothing to say about their conduct, or the business they embark in, or the social life they lead. In all of these matters they come within the jurisdiction of the state where they reside, and are subject to its laws in all that pertains to their transactions and conduct. By these laws they are punished for their offenses, and to them they must appeal for redress of their wrongs.

It can easily be demonstrated that the claim that alien women in the United States are the wards of the government is not tenable. The only justification for such a claim

must come from the very act of Congress here being assailed. In other words, the act of Congress punishing a person in the United States, perhaps a citizen, by imprisonment in the penitentiary for five years, who was guilty of harboring, supporting, maintaining, controlling or keeping an alien woman in a place of prostitution within three years after she shall have entered the United States, would seem to indicate that Congress was, by this legislation, expressing great solicitude for the alien women within the boundaries of the United States—much more solicitude, in fact, than Congress has expressed, or can express, for American women, native and naturalized, in the same walk of life as that of the alien women who practice prostitution.

It will probably be urged by the government that alien women are wards of the United States in the same manner that the Indians are the wards of the United States; but when we come to analyze the relation between the Indians and the United States it will at once be found that the relations between the government and the Indians are on an entirely different footing.

This court has expressed itself very often on the subject of the Indians. One of the late cases is the case of *In re* Heff, 25 Sup. Ct. Rep., 507.

On page 508 the court say:

> "In the early dealings of the government with the Indian tribes the latter were recognized as possessing some of the attributes of nations, with which the former made treaties, and the policy of the government was, sometimes by treaties and sometimes by the use of force, to put a stop to the wanderings of these tribes and locate them on some definite territory or reservation, there establishing for them a communal or tribal life. While this policy was in force, and

this location of wandering tribes was being accomplished, much of the legislation of Congress ran in the direction of the isolation of the Indians, preventing general intercourse between them and their white neighbors in order that they might not be defrauded or wronged through the superior cunning and skill of those neighbors. The practice of dealing with the Indian tribes as separate nations was changed by a provision inserted in the Indian Appropriation Act of March 3, 1871 (16 Stat. at L., 566, Chap. 120, carried into Sec. 2079 Rev. Stat.), which reads: 'No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty.' From that time on the Indian tribes and the individual members thereof have been subjected to the direct legislation of Congress which, for some time thereafter, continued the policy of locating the tribes on separate reservations and perpetuating the communal or tribal life.

"While, during these years, the exercise of certain powers by the Indian tribes was recognized, yet their subjugation to the full control of the United States was often affirmed. In *Lone Wolf* v. *Hitchcock,* 187 U. S., 553, 565, 47 L. Ed., 299, 306, 23 Sup. Ct. Rep., 216, it was said: 'Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government.' And the conclusion thus reached was supported by the authority of several cases. It is true we ruled, when treaties between the Indian tribes and the United States were the subject of consideration, that 'how the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.' *Worcester* v. *Georgia,* 6 Pet., 515, 582; 8 L. Ed., 483,

508. And we also said that the obligations which the United States were under to the Indians called for 'such an interpretation of their acts and promises as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection.' *Choctaw Nation* v. *United States,* 119 U. S., 1, 28, 30; L. Ed., 306, 315; 7 Sup. Ct. Rep., 75. But none of the decisions affirming the protection of the Indians questioned the full power of the government to legislate in respect to them.

"Of late years a new policy has found expression in the legislation of Congress—a policy which looks to the breaking up of tribal relations, the establishing of the separate Indians in individual homes, free from national guardianship and charged with all the rights and obligations of citizens of the United States. Of the power of the government to carry out this policy there can be no doubt. It is under no constitutional obligation to perpetually continue the relationship of guardian and ward. It may at any time abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one *sui juris.* And it is for Congress to determine when and how that relationship or guardianship shall be abandoned. It is not within the power of the courts to overrule the judgment of Congress. It is true there may be a presumption that no radical departure is intended, and courts may wisely insist that the purpose of Congress be made clear by its legislation; but when that purpose is made clear the question is at an end."

In the case of *Choctaw Nation* v. *United States,* 119 U. S., 27, the court say:

"As was said by this court recently in the case of the *United States* v. *Kagama,* 118 U. S., 375, 383: 'These Indian tribes *are* the wards of the nation; they are communitied *dependent* on the United States; dependent largely for their daily food; dependent for

> their political rights. They owe no allegiance to the states and receive from them no protection. Because of the local ill-feeling, the people of the states where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the executive and by Congress, and by this court, whenever the question has arisen."

Many other decisions on this case can be cited. And the general trend of these decisions are that the United States government first dealt with the Indians as a weak nation, made treaties with them, construed the treaties, when doubtful, in their favor, and because of a superior nation dealing with a weaker one, regarded the Indians as wards.

The same reasoning, however, will not apply to individual aliens coming into the United States, not as a nation but as individuals, and there is no reason, nor has there ever been any claim, that the United States government would constitute itself guardian of the foreign women within the boundaries of the United States and for three years see to it that they remained virtuous, or at least did not become prostitutes.

We come now to a consideration of a few of the decisions of this court which throw light upon the question here involved. In view of these decisions counsel for plaintiffs in error contend that, under no conditions, is an alien the ward of the nation, but that the alien is always amenable for conduct to the state wherein he resides; and we respectfully insist that the residents of a state, be they aliens or citizens, are at all times amenable to the laws of

that state for any violation of its police regulations, and we further insist that the federal government cannot lawfully under the guise of legislation, wholly police in its essence, invade the state, seize upon its residents, whether aliens or citizens, subject them to the jurisdiction of its tribunals and to punishment as criminals, and all for the breach of a federal police regulation operating within a sovereign state, in a matter and upon persons entirely within the state jurisdiction and falling exclusively under its police power.

III.

The constitution of the United States is one of limited and expressly delegated powers, which can only be exercised as granted, or in the cases enumerated.

In the case of *McCullough* v. *The State of Maryland*, 4 Wheat., 405, the court says:

> "This government is acknowledged by all to be one of enumerated powers."

In the case of *Houston* v. *Moore*, 5 Wheat., 48, the court say:

> "Nor ought any power to be sought, much less to be adjudged, in favor of the United States, unless it be clearly within the reach of its constitutional character. Sitting here, we are not at liberty to add one jot of power to the national government beyond what the people have granted by the constitution."

In the Civil Rights case, 109 U. S., 3, the court says:

> "The Fourteenth Amendment does not invest Congress with power to legislate upon subjects that are within the domain of state legislation; but to provide modes of relief against state legislation, or state ac-

tion, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of state laws, and the action of state officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment."

In License case, 46 U. S. (5 How.), on page 576, Chief Justice TANEY says:

"It has, indeed, been suggested that if a state deems the traffic in ardent spirits to be injurious to its citizens, and calculated to introduce immorality, vice and pauperism into the state, it may constitutionally refuse to permit its manipulation, notwithstanding the laws of Congress; and that a state may do this upon the same principle that it may resist and prevent the introduction of disease, pestilence, or pauperism from abroad. But it must be remembered that disease, pestilence and pauperism are not subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in, but to be prevented, as far as human foresight or human means can guard against them."

In the case of *Gibbons* v. *Ogden*, 9 Wheat., 203, Chief Justice MARSHALL says:

"They form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, etc., are component parts of this mass.

"No direct general power over these objects is granted to Congress, and, consequently, they remain subject to state legislation."

It is respectfully insisted that the power enjoyed by the state to pass quarantine and health laws is nothing more or less than the police power of that state, and under the police power of the state the state has the power, and the exclusive power, to regulate vice and morality and to pass necessary laws for the protection of its citizens with reference thereto.

In License cases, 5 Howard, 582, 583, the court say:

> "It has been said, indeed, that quarantine and health laws are passed by the states, not by virtue of a power to regulate commerce, but by virtue of their police powers, and in order to guard the lives and health of their citizens. This, however, cannot be said of the pilot laws, which are yet admitted to be equally valid. But what are the police powers of a state? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a state passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates; and its authority to make regulations of commerce is as absolute as its power to pass health laws, except insofar as it has been restricted by the Constitution of the United States."

At page 589 the court says:

> "A license to sell an article, foreign or domestic, as a merchant, or innkeeper, or victualer, is a matter of police and of revenue, within the power of a state. It is strictly an internal regulation, and cannot come in conflict, saving the rights of the importer to sell, of any power possessed by Congress. It is said to

reduce the amount of importation by lessening the profits of the thing imported. The license is a charge upon the business, or profession, and not a duty upon the things sold. The same price is charged to every retailer of merchandise, or spirits, at the same place, without regard to the amount sold. This charge is in advance, of any sales, it would be difficult to show that such a regulation reduced the amount of imported goods. But, if this were the effect of the license, would that make the acts unconstitutional?

"The acknowledged police power of a state extends often to the destruction of property. A nuisance may be abated. Everything prejudicial to the health or morals of a city may be removed. Merchandise from a port where a contagious disease prevails, being liable to communicate the disease, may be excluded; and, in extreme cases, it may be thrown into the sea. This comes in direct conflict with the regulation of commerce; and yet no one doubts the local power."

At page 608 the court says:

"That the police power of the states was reserved to the states, and that it is beyond the reach of Congress; but that such police power extends to articles only which do not belong to foreign commerce, or to commerce among the states, at the time the police power is exercised in regard to them."

On page 629 the court says:

"Nor is there, in my view, any power conferred on the general government which has a right to control this matter of internal commerce or police, while it is fairly exercised so as to accomplish a legitimate object, and by means adapted legally and suitably to such end alone.

"It is the undoubted and reserved power of every state here, as a political body, to decide, independent of any provisions made by Congress, though subject not to conflict with any of them when rightful, who

shall compose its population, who become its residents, who its citizens, who enjoy the privlege of its laws, and be entitled to their protection and favor, and what kind of property and business it will protect."

On page 630 the court says:

"There may be some doubt whether the general government or each state possesses the prohibitory power, as to persons or property of certain kinds, from coming into the limits of the state. But it must exist somewhere; and it seems to me rather a police power, belonging to the states, and to be exercised in the manner best suited to the tastes and institutions of each, than one anywhere granted or proper to the peculiar duties of the general government."

On page 631 the court says:

"Where can such a power also be safer lodged than with those public bodies, or states, who are themselves to be the greatest sufferers in interest and characted by an improper use of it?

"The states stand properly on their reserved rights, within their own powers and sovereignty, to judge of the expediency and wisdom of their own laws; and while they take care not to violate clearly any portion of the constitution or statutes of the general government, our duty to that constitution and laws, and our respect for state rights, must require us not to interfere."

On page 632 the court says:

"As subjects of legislation, they are from their very nature, of primary importance; they lie at the foundation of social existence; they are for the protection of life and liberty, and necessarily compel all laws on subjects of secondary importance, which relate only to property, convenience, or luxury, to recede, when they come in conflict or collision, *salus populi suprema lex.*

"If the right to control these subjects be 'incomplete, unqualified, and exclusive' in the state legislatures, no regulations of secondary importance can supersede or restrain their operations, on any ground or prerogative or supremacy. The existence of the social compact require that such laws be executed before and above all others.

"It is for this reason that quarantine laws, which protect the public health, compel mere commercial regulations to submit to their control. They restrain the liberty of the passengers; they operate on the ship, the agents of navigation. They seize the infected cargo, and cast it overboard. The soldier and the sailor, though in the service of the government, are arrested, imprisoned, and punished for their offenses against society. Paupers and convicts are refused admission into the country. All these things are done, not from any power which the state assumes to regulate commerce or to interfere with the regulations of Congress, but because police laws for the preservation of health, prevention of crime, and protection of the public welfare, must of necessity have full and free operation, according to the exigency which requires their interference."

In the case of *King et al.* v. *American Transp. Co.*, 14 Fed. Cases, 513, the court say:

"But this constitutional grant of power does not confer upon congress the authority to extend its legislation throughout the entire sphere of legislation of the several states.

"Each state has exclusive control over all matters pertaining to its own internal police. It can establish and regulate ferries across its rivers—control the moving of vessels within harbors within its borders, and enact health and inspection laws, which, by quarantine or otherwise, may operate on persons brought within its jurisdiction in the course of commercial operations. The Supreme Court of the United States in the case

> of *City of New York* v. *Milne,* 11 Pet. 36 U. S., 139, broadly declared the doctrine, that a state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the constitution of the United States."

Counsel for plaintiffs in error have failed to find any case wherein the Supreme Court of the United States has held, in interpreting the constitutional power of congress, that congress has the power to enact laws operative upon persons and things or land *within* the boundaries of state jurisdiction.

The Fourteenth Amendment of the United States Constitution forbids the state from abridging the privileges belonging to a person as a citizen of the United States, but does not forbid the states from abridging the privileges belonging to their citizens as citizens of states.

Marriage is a privilege belonging to persons as members of society, and as citizens of the states in which they reside, and may be abridged at the will of the state in which they reside.

Marriage, though a contract, is more than a civil contract, and is not affected by the clause of the tenth section of the first article of the constitution forbidding a state from passing any laws impairing the obligation of contracts.

In *Passenger Case,* 48 U. S., 287, at page 405, the court says:

> "When the merchandise is taken from the ship and becomes mingled with the property of the people of the state, like other property, it is subject to the local law; but until this shall have taken place, the merchandise is an import and is not subject to the taxing power of the state, and the same rule applies to passengers, when

they leave the ship and mingle with the citizens of the state, they become subject to its laws."

The purely restrictive or negative influence of the Federal Constitution upon the police power of the state is more important than the positive police legislation of congress. A deliberate purpose to place the state police power under federal control can hardly be attributed to the framers of the constitution. The prohibitions upon state legislation contained in the original constitution and directed against invasion of vested rights by restrictive statutes; the first ten amendments apply only to the federal government itself, the thirteenth amendment interfered with the police power of the state, but only as to the specific institution of slavery. The fourteenth amendment and the commerce clause are at present chiefly relied upon as checks upon the police power of the state. It may, therefore, be stated as a general proposition, that the police power in the United States is located in the states. The state is entrusted with the duty of enacting and maintaining all those internal regulations which are necessary for the preservation and the prevention of injury to the rights of others. The United States Government cannot exercise its power, except in those cases in which the power of regulation is granted to the general government, expressly or by necessary implication; for example, it was held unconstitutional for congress to declare to be a misdemeanor for any one to mix naphtha and illuminating oil and offer the adulterated oil for sale, or to prohibit the sale of petroleum, that is inflammable at less than the given temperature. This was a police regulation that could only be established by the state.

2 Tiedeman on State and Federal Control of Persons and Property, 1019.

United States v. *Dewitt*, 9 Wall., 41.

Patterson v. *Kentucky*, 97 U. S., 501.

Police powers of a state are the powers of government inherent in any sovereignty to the extent of its dominions and are exercisable by the states of the Union to regulate commerce, except as such exercise is restricted by the Federal Constitution.

Per Taney, p. 583; per McLean, p. 582, in License Case, 4h U. S.

The legislative power of a state extends to everything within the sphere of such power, except as it is restricted by the Federal Constitution or that of the state.

Township of Pine Grove v. *Talcott,* 86 U. S., 670.

In the *City of New York* v. *Miln,* 36 U. S., 105, 11 Peters, 102, the court says at page 138:

> "A state has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits as any foreign nation where that jurisdiction is not surrendered, or limited by the Constitution of the United States. * * * That all powers which relate to merely municipal legislation or what may perhaps more properly be called *internal police,* are not thus surrendered or restrained, and that consequently in relation to these the authority of the state is complete, unqualified and *exclusive.* * * * We should say that every law came within this description which concerns the welfare of the whole people of a state, or any individual within it, or whether it related to their rights or their duties, whether it respected them, as men or as citizens of the state; whether in their public or private relations; whether it related to the rights of persons or of property, or the whole people of a state, or of an individual within it; and whose operation was within the territorial limits of the state, and upon the persons and things within its jurisdiction. * * *

"The right to punish or prevent crime 'in no degree depends upon the citizenship of the party who is obnoxious to the law. The alien who shall just have set his feet upon the soil of the state, is just as subject to the operation of the law as one who is a native citizen. * * * Now, why is this? For no other reason than this: simply, that being within the territory and jurisdiction of New York, they are liable to the laws of that state, and among others, to its criminal laws, and this, too, not only for treason, murder and other crimes of that degree of atrocity, but for the most petty offenses which can be imagined. * * *

"*Persons* are not the subject of commerce, and not being imported goods, they do not fall within the reasoning founded upon the construction of a power given to congress to regulate commerce, and the prohibition of the state from imposing a duty on imported goods."

At page 132 the court says:

"Let us see what powers are left with the states. The Federalist, in the 45th number, speaking of this subject, says: 'The power reserved to the several states will extend to all objects which in the ordinary course of affairs concern the lives, liberties and properties of the people; and the internal order, improvement and prosperity of the state.'

"And this court, in the case of *Gibbons* v. *Ogden*, 9 Wheat., 203, in speaking of the inspection of the laws, say:

"They form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the general government, all which can be most advantageously exercised by the states themselves."

At page 137 the court says:

"Another section requires the master to report to the collector a list of all passengers, designating the

age, sex, occupation, the country to which they belong, etc., which list is required to be delivered to the secretary of the state, and which he is directed to lay before congress. The object of this clause, in all probability, was to enable the Government of the United States to form an accurate estimate of population by immigration; *but whatever may have been its purpose, it is obvious that those laws only affect, through the power over navigation, the passengers whilst on their voyage, and until they shall have landed; after that and when they have ceased to have any connection with the ship,* and when, therefore, they have *ceased* to be passengers, we are satisfied that Acts of Congress applying to them, as such, and only professing to legislate in relation to them as such, have then performed their office and can with no propriety of language, be said to come in conflict with the law of the state, whose operation only begins when that of the laws of congress ends; whose operation is not even on the same subject, because, although the person on whom it operates is the same, yet having ceased to be a passenger, he no longer stands in the only relation in which the laws of congress either professed or intended to act upon him."

In *United States* v. *Dewitt,* 76 U. S., 41, Dewitt was indicted under a law passed by congress which made it a misdemeanor, punishable by a fine and imprisonment, to mix for sale naphtha and illuminating oils, or to sell or offer for sale such mixtures, or to sell or offer for sale oil made of petroleum for illuminating purposes inflammable at a less temperature or fire-test than 100 degrees. In the opinion the court says:

"As a police regulation, relating exclusively to the internal trade of the state, it can only have effect where the legislative authority of congress excludes, territorially, all state legislation, as for example, in the District of Columbia. Within state limits it can have

no constitutional operation. This has been so frequently declared by the court, results so obviously from the terms of the constitution, and has been so fully explained and supported on former occasions, that we think it unnecessary to enter again upon the discussion." (License Case, 5 How., 504; Passenger Cases, 7 How., 283; License Tax Cases, 5 Wall., 470, and cases cited.)

In Slaughtering House Case, 83 U. S., (6 Wall.) at page 64, court says of *U. S.* v. *Dewitt*:

> "In that case an Act of Congress which undertook as a part of the internal revenue law to make it a misdemeanor to mix for sale naphtha and illuminating oils, or to sell oil or petroleum inflammable at less than a prescribed temperature, was held to be void, because as a police regulation the power to make such a law belonged to the state and did not beling to congress."

In the American constitutional system the power to establish the ordinary regulations of police has been left with the individual states, and cannot be assumed by the national government.

Cooley Const. Lim., 574.

It (police power) is embraced in what Mr. Chief Justice MARSHALL in *Gibbons* v. *Ogden*, calls the "immense mass of legislation," which can be most advantageously exercised by the state and over which the national government cannot assume supervision or control.

Patterson v. *Kentucky*, 97 U. S., 503.

In *U. S.* v. *Knight*, 156 U. S., at page 11, Chief Justice FULLER rendering the opinion of the court, says:

> "It cannot be denied that the power of a state to protect the lives, health and property of its citizens, one to preserve good order and the public morals, 'the

> power to govern men and things within the limits of its dominion,' is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the Constitution of the United Staes, and, essentially *exclusive.*"

In re Rohrer, 140 U. S., 555, the court says:

> "In short, it is not to be doubted that the power to make the ordinary regulations of police remains with the individual states, and cannot be assumed by the national government, and that in this respect it is not interfered with by the fourteenth amendment."
>
> *Barber* v. *Connolly,* 113 U. S., 27, 31.

> "The power of the state to impose restraints and burdens upon persons and property in conservation and promotion of the public health, good order and prosperity, is a power originally and always belonging to the states, not surrendered by them to the general government nor directly restrained by the Constitution of the United States, and essentially *exclusive.*"

And this court has uniformly recognized state legislation, for police purposes, as not in the sense of the constitution necessarily infringing upon any right which has been confided expressly or by implication to the national government.

IV.

Granted that under the commerce clause of the constitution Congress has plenary power to legislate concerning all matters affecting inter-state commerce or commerce with foreign nations, when Congress enacts a law under this power with reference to alien women, to what extent can Congress go in enacting laws in order to make the legislation effective?

A question almost identical with this was discussed by this court in the case of *Howard* v. *Illinois C. R. R. Co.*, 28 Sup. Ct. Rep., p. 147. This is the case wherein the provision of the Employer's Liability Act of July 11, 1906, was assailed for the reason that it was unconstitutional Among other things, on page 147, this court says:

> "It remains only to consider the contention which we have previously quoted, that the act is constitutional although it embraces subjects not within the power of congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of congress. To state the proposition is to refute it. It assumes that, because one engages in interstate commerce, he thereby endows congress with power not delegated to it by the constitution; in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as congress may prescribe, even although the conditions would be otherwise beyond the power of congress. It is apparent that if the contention were well founded it would extend the power of congress to every conceivable subject, however inherently local; would ob-

literate all limitations of power imposed by the constitution, and would destroy the authority of the states as to all conceivable matters which, from the beginning have been, and must continue to be, under their control so long as the constitution endures."

In the Trade-Mark cases, 100 U. S., 96, this court says:

"Governed by this view of our duty, we proceed to remark that a glance at the commerce clause of the constitution discloses at once what has been often the subject of comment in this court and out of it, that the power of regulation there conferred on Congress is limited to commerce with foreign nations, commerce among the states, and commerce with the Indian tribes. While bearing in mind the liberal construction, that commerce with foreign nations means commerce between citizens of the United States and citizens and subjects of foreign nations, and commerce among the states means commerce between the individual citizens of different states, there still remains a very large amount of commerce, perhaps the largest, which, being trade or traffic between citizens of the same state, is beyond the control of Congress.

"When, therefore, Congress undertakes to enact a law, which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the law, or from its essential nature, that it is a regulation of commerce with foreign nations, or among the several states, or with the Indian tribes. If not so limited, it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of the same state, it is obviously the exercise of power not confided in Congress."

In the case of *Williams* v. *Fears*, 21 Sup. Ct. Rep., 131, there is quoted with approval, in the opinion, an ex-

tract of a former opinion of this court by Mr. Justice WHITE. Said quotation is taken from the case of *Hooper v. California,* 15 Sup. Ct. Rep., 210, wherein the court says:

> "It ignores the real distinction upon which the general rule and its exceptions are based, and which consists in the difference between interstate commerce, or an instrumentality thereof, on the one side, and the mere incidents which may attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which such commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states, and would exclude state control over many contracts purely domestic in their nature."

V.

To what extent may Congress legislate concerning aliens after they have come into any particular state of the United States?

If that portion of the Act of Congress questioned on this writ of error is constitutional, the court must hold that congress has the right to legislate concerning aliens either under the power granted by the commerce clause in the constitution, or by the inherent power of sovereignty with reference to aliens.

Suppose, for the sake of the argument, that this court should hold that to logically carry out the purposes of any legislation under the commerce clause, or the other power inherent in sovereignty, with reference to aliens, congress

has plenary power to enact such further legislation as it may deem proper with reference to the conduct of aliens in any particular state several years after they have landed in the country, to what extent may such legislation go?

Under the supposed power above mentioned, would congress have the right to pass any and all laws intended to guard and protect the alien woman in their relations with citizens of the different states? For example: Instead of that portion of the law here questioned, suppose congress were to enact a law not designed to keep the alien woman pure, but a law which made it a criminal offense, punishable by indictment in the federal court, for any person, including a citizen of any state, to buy or receive from an alien woman within three years after she shall have come to the United States, property stolen by the alien woman; or suppose congress were to enact a law which made it a criminal offense for any person in this state to assist an alien in committing the crime of arson, or murder, or false pretenses, or forgery, or embezzlement, or any other crime. It would seem that if congress in any way had the power to pass a law making it an offense for a citizen of a state to maintain an alien woman for the purpose of prostitution within three years after she had come into the United States, congress would have the power to make it a criminal offense, punishable in the Federal Court, for any citizen in connection with an alien woman within three years after she came into the United States to commit any crime.

It is said that in the State of New York there are more than two million aliens, and that in the State of Illinois there are over two hundred and fifty thousand. If congress had the right to pass such laws as above indicated, and should pass the laws, we would be confronted with a strange situation in every state of the Union.

The sovereignty of the state in so far as it had full and exclusive power of government over all persons within its boundaries would forever be destroyed.

VI.

Source of the power of Congress to legislate concerning aliens.

A careful examination of the decisions of this court upon legislation affecting aliens leads unalterably to the view that the power exercised by congress in enacting laws with reference to Chinese, paupers, convicts, prostitutes, etc., is obtained in one of two ways: either from the commerce clause of the constitution, or because the United States, as a nation, on the accepted principle of international law that every sovereign nation has the power inherent in sovereignty and essential to self preservation to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.

With reference to the power derived from the commerce laws of the constitution, Mr. Justice BROWN of this court, while circuit judge for the Eastern District of Michigan, in 1886, in the case of *United States* v. *Craig*, 28 Fed. Rep., 796, said:

> "This demurrer raises the single question of the constitutionality of what is known as the 'Assisted Immigration Act,' of February 26, 1885, the third section of which enacts 'that for every violation of any of the provisions of section one of this act, the person, partnership, company or corporation violating the same, by knowingly assisting, encouraging or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States,' etc., 'to

perform labor or service of any kind, under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offense the sum of one thousand dollars.' The contention of the government is that the act is a valid exercise of the power of congress 'to regular commerce with foreign nations.'

"The extent of this power, and the definition of the word 'commerce' were at an early day made the subject of an elaborate discussion in the famous case of *Gibbons* v. *Ogden*, 9 Wheat, 1. It was claimed by the strict constructionists of that period that the power of congress was limited to the regulation of traffic in goods, to buying and selling, or the *interchange* of commodities; but it was held by the court to comprehend the whole subject of navigation and intercourse with foreign nations and between the states, and to be subject to no limitation other than those prescribed in the constitution itself.

"The same questions were again discussed in the Passenger Cases, 7 How., 283, in which was involved the constitutionality of certain state laws requiring the masters of vessels engaged in foreign commerce to pay a tax upon every passenger brought into the state. The case raised two questions: (1) Whether the power of congress to regulate commerce was exclusive; and (2) whether the state statutes in question were regulations of commerce. Both these questions were answered in the affirmative. The first was considered to have already been settled by prior decisions. With regard to the meaning of the word 'commerce,' the definition of the lexicographers, 'an exchange of commodities,' was rejected. It was again held to include all navigation and intercourse—to the transportation of passengers as well as property—and, as a legitimate deduction from this, that the state laws in question imposing a tax upon this intercourse were unconstitutional."

In Head Money Cases, 112 U. S., 591, the court say:

"This court is not only asked to decide this, but it is asked to overrule its decision, several times made with unanimity, that the power *does* reside in congress, is conferred upon that body by the express language of the constitution, and the attention of congress directed to the duty which arises from that language to pass the very law which is here in question.

"That these statutes are regulations of commerce—of commerce with foreign nations—is conceded in the argument in this case; and that they constitute a regulation of that class which belongs exclusively to congress is held in all the cases in this court. It is upon these propositions that the court has decided in all these cases that the state laws are void. Let us examine those decisions for a moment.

"In the Passenger Cases, so called, the report of which occupies the pages of 7 Howard from page 283 to 573, mostly with opinions of the judges, the order of the court is that 'it is the opinion of this court that the statute law of New York, by which the health commissioner of the City of New York is declared entitled to demand and receive from the master of every vessel from a foreign port that should arrive in the port of said city the sum of one dollar for each steerage passenger brought in such vessel, is repugnant to the constitution and laws of the United States, and therefore void.' An examination of the opinions of the judges shows that if the majority agreed upon any one reason for this order, it was because the law was a regulation of commerce, the power over which that constitution had placed exclusively in congress. The same examination will show that several judges denied this, because they held that this power belonged to the class which the states might exercise until it was assumed by congress. It is very clear that, if any such Act of Congress had existed then as the one now before us, the

decision of the court would have been nearer to unanimity.

"In the case of *Henderson* v. *The Mayor of New York*, 92 U. S., 259, the whole subject is reviewed, and, in the light of the decision in this court in the Passenger Cases, it is considered, on principle, as if for the first time. In that case, after the statute of New York had been modified in such a manner as was supposed to remove the objections held good against it in the Passenger Cases, the question of its constitutional validity was again brought before this court, when it was held void by the unanimous judgment of all its members. And this was upon the distinct ground that it was a regulation of commerce solely within the power of congress.

" 'As already indicated,' says the court, 'the provision of the Constitution of the United States, on which the principal reliance is placed to make void the statute of New York, is that which gives to congress the right "to regulate commerce with foreign nations." '

"The court then, referring to the transportation of passengers from European ports to those of the United States, says: 'It has become a part of our commerce with foreign nations, of vast interest to this country as well as to the immigrants who come among us, to find a welcome and a home within our borders. Is the regulation of this great system a regulation of commerce? Can it be doubted that a law which prescribes the terms on which vessels shall engage in it, is a law regulating this branch of commerce?'

"The court adds: 'We are of opinion that this whole subject has been confided to congress by the constitution; that congress can more appropriately and with more acceptance exercise than any other body known to our law, state or national; that, by providing a system of laws in these matters, applicable to all ports and all vessels, a serious question which has long been matter of contest and complaint, may be effectually and satisfactorily settled.' And for this reason the statute of New York is held void.

"In the case of the *Commissioners of Immigration* v. *North German Lloyd*, 92 U. S., 259, a similar statute in Louisiana was held void for the same reason. And in the case of *Chy Lung* v. *Freeman*, 92 U. S., 275, decided at the same time, the statute of California on the same subject was also held void, because, in the language of the head note to the report, it 'invades the right of congress to regulate commerce with foreign nations.'

"In the case of *People* v. *Campagnie Generale Transatlantique*, 107 U. S., 59, where the State of New York, having again modified her statute, it was again held void, the court said: 'It has been so repeatedly decided by the court that such a tax as this is a regulation of commerce with foreign nations, confided by the constitution to the exclusive control of congress' (referring to the cases just cited) 'that there is little to say beyond affirming the judgment of the Circuit Court, which was based on those decisions."

In the case of *Wong Wing* v. *U. S.*, 16 Sup Ct. Rep., on page 580, the court say:

"Our views upon the question thus specifically pressed upon our attention, may be briefly stated thus: 'We regard it as settled by our previous decisions that the United States can, as a matter of public policy, by congressional enactment, forbid aliens or classes of aliens from coming within their borders and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such decree, and causing their deportation, upon executive or subordinate officials.'"

In the case of *United States ex rel Turner* v. *Williams*, 24 Sup. Ct. Rep., 722, the court say:

"Whether rested on the accepted principle of international law, that every sovereign nation has the power

as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe, or on the power to regulate commerce with foreign nations, which includes the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States, the act before us is not open to constitutional objection."

Conclusion.

Whether the power exercised by congress in enacting laws with refernce to aliens is derived from the commerce clause of the constitution or is the power inherent in sovereignty to forbid the entrance of foreigners within its dominions, there is not, under any circumstances, any power granted by the constitution, or any inherent power in sovereignty to enact a law which makes a citizen of the United States a felon who, two years and eleven months after an alien woman, from London, for instance, shall have entered the United States, keeps or harbors said alien woman in a place of prostitution, while the same citizen who was equally guilty of like conduct with an American-born woman, or an alien woman who shall have been in the United States over three years, would not be a felon and could not be punished under this law.

This court has frequently held that whenever the power is granted by the constitution to enact certain laws, congress is, by the same grant of power, given the right to pass all laws necessary to make the first law effective. In other words, when congress, under the commerce laws, acquired the right to enact a law forbidding the carrying of lottery tickets from one state to another, it also acquired

the power to enact a law making it a criminal offense to carry lottery tickets from one state to another; and in the case at bar this is conceded by counsel for plaintiffs in error —that congress has, under the commerce clause, the right to forbid the importation into the United States all women for the purpose of prostitution, and has the power to make it a felony for any person who does import, or attempt to import, into the United States any woman for the purpose of prostitution. But it is contended that congress has no power to make it a felony, or even a misdemeanor, for a person in the City of South Chicago, in the State of Illinois, two and a half years after an alien woman has entered the United States, to keep, maintain and control the said alien woman in a house of prostitution.

That portion of the law claimed by plaintiffs in error to be unconstitutional is not at all necessary to render the admittedly constitutional parts of the law effective. The act of plaintiffs in error in the case at bar could not have remotely affected the commerce between the United States and Hungary. If an undesirable alien came into the United States in the person of Irene Bodi, her coming was in no way affected by her conduct two and a half years after her arrival in the United States, and it is respectfully suggested that there is no theory upon which it can be claimed that the portion of the act of commerce of February, 1907, can be constitutional.

For all these reasons the plaintiffs in error, by their counsel, respectfully pray that this court hold that that portion of the Act of Congress of February 20, 1907, in the words and figures as follows: "Or whoever shall keep, maintain, control, support or harbor in any house or other place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years

after she shall have entered the United States," is unconstitutional, invalid and void, and the plaintiffs in error pray that the judgment in this case be reversed and that an order be entered discharging them from custody.

Respectfully submitted

BENJAMIN C. BACHRACH,
Attorney for Plaintiffs in Error.

ELIJAH N. ZOLINE,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

JOSEPH KELLER, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 653.

LOUIS ULLMAN, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 654.

BRIEF FOR THE UNITED STATES.

I.

STATEMENT OF THE CASE.

Section 3 of the act of February 20, 1907, entitled "An act to regulate the immigration of aliens into the United States," reads as follows:

> SEC. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or *whoever shall keep, maintain, control, support, or harbor in any*

> *house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States,* shall in every such case be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars, and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act. (34 Stat. 899.)

The question is whether that part of said section which is above italicized is constitutional, it being insisted that the offense therein denounced can be made a crime only by state legislation, and is cognizable only in state courts, and that Congress has no power to declare the acts mentioned a criminal offense.

II.

Power of Congress to legislate with reference to aliens.

The general powers of Congress with reference to aliens have been repeatedly declared by this court. It was said by the court, speaking through Mr. Chief Justice Fuller, in *Turner* v. *Williams* (194 U. S., 289), that—

> Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to pre-

> scribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers; that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application;

and numerous cases were cited to support these several propositions.

In *Fong Yue Ting* v. *United States* (149 U. S., 708) the court quoted with approval the following from Phillimore's International Law:

> It is a received maxim of international law that the government of a state may prohibit the entrance of strangers into the country, and *may therefore regulate the conditions under which they shall be allowed to remain in it, or may require and compel their departure from it.*

In this case it was further said that,

> the right to exclude or to expel all aliens, or any class of aliens, absolutely or upon certain conditions, in war or in peace,

is

> an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence, and its welfare (p. 711).

It has also been held that the power to prohibit or regulate the importation of aliens into this country is

vested in Congress by virtue of the commerce clause of the Constitution. *Head Money cases* (112 U. S., 580, 591). But it is manifest that the broad powers which Congress has repeatedly exercised in prescribing the conditions upon which aliens may remain in this country and providing for their expulsion, and which has been as often recognized as valid by this court, can hardly find justification in the commerce clause alone, as it might with reason be insisted that after the alien has been landed, and having passed the proper inspections has become a resident of the country and one of its great mass of inhabitants, he can no longer be regarded as an object of commerce. No limit has yet been placed by this court upon the power of Congress to regulate the conduct of aliens, under the principle that the power to prescribe the conditions upon which aliens may remain here and to exclude them, is inherent in the National Government as a sovereign power, and essential for its self-preservation. And, since the questions of foreign immigration and the rights of aliens have already become important ones, and are daily assuming larger proportions, and since such questions can be successfully handled only by the National Government, we respectfully submit that this court should long hesitate to prescribe a limit to congressional power in this particular. Its discretionary right in this respect is the greater, because the power to be construed is an inherent one, necessarily arising by implication out of the sovereignty of the National Government; and the restrictions, therefore, are not so well defined as when the

power appears in some particular clause of the Constitution, or arises by implication out of a particular clause.

It is also a well-settled principle that, inasmuch as Congress has the power to prohibit the immigration of aliens, to prescribe conditions upon which they may remain in this country, and to compel their expulsion, it has also the power to provide for the punishment of those who may assist in the violation of laws enacted thereunder. (*Lees* v. *United States*, 150 U. S., 476, 480.)

One of the latest applications of this rule was in the case of *United States* v. *Bitty* (208 U. S., 393), wherein it was held that, under the clause of the section now in question, which provides that—

> whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, *or for any other immoral purpose*, * * * shall, in every such case, be deemed guilty of a felony,

an indictment was good which charged that the defendant had unlawfully, wilfully, and feloniously imported into the United States, from England, a certain-named alien woman "for an immoral purpose, namely, that she should live with him as his concubine."

Under these general principles there can be no doubt that, if the clause of section 3 of the act of February 20, 1907, which is here in question, relates to or materially affects the importation of aliens into

this country, or the conditions under which they may remain therein, or their expulsion therefrom, then its enactment was within the power of Congress, regardless of the police powers of the States. And we insist that its validity should be maintained upon the ground that it does relate to such matters, and will not discuss the question how far, if at all, Congress may treat aliens as wards of the nation, and may, independent of the question of admission and expulsion, regulate their conduct and the conduct of others in connection with them.

III.

The validity of the clause in question should be maintained because it relates to and materially affects the importation of the class of women mentioned therein.

Among the many classes of aliens named in the second section of the act as being excluded from admission into the United States are—

> prostitutes, or women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose.

By the first clause in section 3 it is declared—

> that the importation into the United States of any alien woman or girl for the purpose of prostitution or for any other immoral purpose, is hereby forbidden.

This clause states the purpose of the provisions which immediately follow; and there may very well

be inserted thereafter a phrase which would make the following clauses read thus:

> And (*in order to prevent the importation of such persons, it is enacted that*) whoever shall, directly or indirectly import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or *whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States,* shall in every such case be deemed guilty of a felony.

The provisions in question did not appear in the act of March 3, 1903 (32 Stat., 1214), and manifestly Congress ascertained that, owing to the many subterfuges resorted to by those interested in the importation of women and girls for the purpose of prostitution and other immoral purposes, it was necessary to make it conclusive evidence that the importation was for such immoral purpose as she might be found engaged in within three years after her entry, and that he who might be found keeping her for an immoral purpose within such time, should be deemed to do so in pursuance of an unlawful importation. Viewed in that light, the provision is not at all unreasonable, and is most salutary in its restraint upon the importation of women and girls for such purposes; because it would

be a comparatively easy matter to cover up an arrangement with a female that she come to the United States for an immoral purpose, and have her imported in such manner that it would be practically impossible for the object of the importation to be ascertained; while, if she is prohibited from engaging in such business, and all persons be prohibited from keeping her for such purpose for three years after her arrival, the inducement to procure alien females for immoral purposes would be destroyed.

That it was the design of Congress that such facts should be deemed conclusive evidence of an *unlawful importation*, and that the penalty was imposed for such *importation*, is clearly shown by the concluding clause of this section, to wit:

> And any alien woman or girl who shall be found an inmate of a house of prostitution, or practicing prostitution, at any time within three years after she shall have entered the United States, *shall be deemed to be unlawfully within the United States* and shall be deported as provided by sections twenty and twenty-one of this act.

As above shown, the introductory clause declares that the importation of females for the purpose of prostitution and other immoral purposes is unlawful, and this last clause declares that if an alien female be found practicing prostitution within three years after her arrival she shall be deemed to be unlawfully within the United States; that is, *that her original importation was for the purpose of prostitution.*

IV.

The clause in question should be held valid because it relates to and materially affects the conditions upon which an alien female may be permitted to remain in this country, and the grounds which warrant her exclusion.

Immediately following this clause is the provision above quoted, that if found practicing prostitution within three years after she shall have entered the United States she shall be deported. It therefore appears that the state of facts for which plaintiffs in error have been indicted and convicted afford conclusive grounds for this unfortunate girl's expulsion from the United States. The admission of alien females under this act may be regarded as only conditional, and for three years she is on probation; and, if within that time she be guilty of the acts therein mentioned, she forfeits her right to remain. And it is certainly within the power of Congress to provide a punishment for those who thus bring about her expulsion.

V.

The validity of the provision in question should be determined from its general effect upon the importation and exclusion of aliens.

It is apparent that in considering the constitutionality of this clause a broader view should be taken than of the facts of this particular case, or of any other single case. It may not be apparent how the keeping of Irene Bodi in a house of prostitution, which belonged to and was controlled by plaintiffs in error, had any connection with her importation; and if

one's mental horizon be limited to the facts appearing in this record, it may quite plausibly be insisted that to punish plaintiffs in error for the keeping of Irene Bodi as a prostitute was a matter which falls exclusively within the reserved powers of the States. But the act in question was passed by Congress with reference to its effects upon the importation of alien females for immoral purposes in general; and the question is, *Do its provisions, and the fact that those who are guilty of such conduct as that for which plaintiffs in error have been convicted may be prosecuted in the United States courts, materially reduce the importation of females for immoral purposes, and thus restrain an evil with reference to which it has been universally held that Congress has the power to legislate?* If they do, then this provision falls within the purview of congressional legislation, and is valid, notwithstanding the fact that the State has, in the exercise of its reserved powers, the right to punish plaintiffs in error for the same conduct.

The object of the one punishment is entirely different from that of the other. The punishment is inflicted by the State for the purpose of suppressing vice and immorality within its limits, a matter over which Congress has no direct control; while the National Government punishes such an offender in order to prevent the introduction into the mass of inhabitants of the entire country of immoral female aliens, *a matter which rests exclusively within its province.*

There is nothing antagonistic or conflicting in the existence of these dual punishments for the same

acts, inasmuch as they constitute two distinct offenses, the one against the state government and the other against the National Government; and the right of each of these two governments to inflict punishment for the same act has repeatedly been recognized by this court. (*Moore* v. *The People*, 14 How., 14, 20; *Coleman* v. *Tennessee*, 97 U. S., 509; *Crafton* v. *United States*, 206 U. S., 333, 354.)

We print as an appendix to this brief the correspondence which brought about the amendment to the immigration laws here attacked, not as authority for determining the extent of Congressional power upon this subject, but as a part of the history of the immigration question cotemporaneous with the passage of the act, and because it contains a full and clear statement of how this provision is an effective cure of radical defects in the law as it previously existed.

The case of *United States* v. *Coombs* (12 Pet., 71) is a good illustration of the power of Congress to declare an act a crime, though clearly punishable by a state law, but which is incidentally connected with a matter which is subject to regulation by Congress. In that case the defendant was indicted for stealing certain articles from a ship which had been cast away on a shoal of the sea in the southern district of New York. It was admitted that the goods were taken above high-water mark upon the beach in Queens County, N. Y., and the judges in the court below were divided in opinion as to whether the offense fell within the jurisdiction of the court. This court, however, held

that, notwithstanding the fact that the property had been removed from the ship and was above high-water mark, and was therefore within the State of New York and outside the admiralty jurisdiction of the United States, yet the defendant was subject to punishment in the United States court; and as a reason therefor said:

> It is manifest that Congress possess no authority to punish offenses of this sort generally, when committed on land; but only to punish them when connected with foreign trade and navigation, or with trade and navigation among the several States (p. 79).

The connection between the stealing of goods under those conditions and the power of Congress to regulate commerce is certainly as remote as the keeping of an alien girl as a prostitute and the power of Congress to prohibit or regulate the admission of alien girls into the country, specify conditions upon which they may remain, and provide for their expulsion.

In the great opinion delivered by Mr. Chief Justice Marshall in *McCulloch* v. *Maryland* (4 Wheat, 315, 417), in considering how far Congress may enact legislation for the purpose of putting into effect the powers vested in the National Government, by way of illustration it was said:

> Take, for example, the power "to establish post-offices and post-roads." This power is executed by the single act of making the establishment. But from this has been inferred the power and duty of carrying the mail along the post-road, from one post-office to another.

> And from this implied power has again been inferred the right to punish those who steal letters from the post-office or rob the mail. It may be said, with some plausibility, that the right to carry the mail and to punish those who rob it, is not indispensably necessary to the establishment of a post-office and post road. This right is indeed essential to the beneficial exercise of the power, but not indispensably necessary to its existence. So, of the punishment of the crimes of stealing or falsifying a record or process of a court of the United States, or of perjury in such court. To punish these offenses is certainly conducive to the due administration of justice. But courts may exist and may decide the causes brought before them, though such crimes escape punishment.

In *United States* v. *Marigold* (9 How., 560, 568), in holding that Congress had the power to pass an act providing for the punishment of persons passing counterfeit coin, the court said:

> We admit that the clause of the Constitution authorizing Congress to provide for the punishment of counterfeiting the securities and current coin of the United States does not embrace within its language the offense of uttering or circulating spurious or counterfeited coin (the term *counterfeit* both by its etymology and common intendment signifying the fabrication of a false image or representation); nor do we think it necessary or regular to seek the foundation of the offense of circulating spurious coin, or for the origin of the right to punish that offense, either in the section of the statute before quoted, or in this

clause of the Constitution. *We trace both the offense and the authority to punish it to the power given by the Constitution to coin money, and to the correspondent and necessary power and obligation to protect and to preserve in its purity this constitutional currency for the benefit of the nation.*

In *United States* v. *Bridleman* (7 Fed., 894) it was held by District Judge Deady that a white man was, under proper legislation, subject to prosecution in the federal court for stealing a blanket from an Indian on a reservation in the State of Oregon, by virtue of the constitutional power of Congress to regulate commerce with the Indians. And in *United States* v. *Holiday* (3 Wall., 407) it was held by this court that the power of Congress to regulate commerce with the Indian tribes is coextensive with the subject and applies to individuals constituting the tribes, although off a reservation and within the limits of a State; and, therefore, that an act which provides for the punishment of a person who sells spirituous liquor to an Indian under the charge of an agent was constitutional and applied to the case before the court, although the sale took place off a reservation and within the limits of a State.

These authorities, we insist, are applicable to and determinative of the question now before the court; and we, therefore, insist that the statutory provision in question is constitutional, and that the judgment of the court below should be affirmed.

J. A. FOWLER,
Assistant Attorney-General.

FEBRUARY, 1909.

APPENDIX.

DEPARTMENT OF JUSTICE,
OFFICE OF UNITED STATES ATTORNEY
FOR THE DISTRICT OF WASHINGTON,
Seattle, Wash., December 28, 1904.

The ATTORNEY-GENERAL,
Washington, D. C.

SIR: I recently tried two criminal cases in this district, at Seattle, in which the defendants were charged, under section 3 of the act of March 3, 1903, each with holding a Japanese girl or woman for the purposes of prostitution, at the city of Seattle, pursuant to her importation for that purpose into the United States.

The testimony, in brief, showed that a man by the name of Kanota had brought two girls from Japan to Victoria, within a few days after meeting them for the first time, telling them that he was bringing them to Seattle. He paid the expenses on the steamer to Victoria, paid their bills in Victoria, and then accompanied and brought them to Seattle, by way of North Port and Spokane, paying all expenses. One girl testified she came to sell wine in a shop; the other to learn the tailoring trade. Within ten days after arriving in Seattle he secured from Saito, the

keeper of a Japanese house of prostitution, $600, and surrendered or gave into his keeping one of the girls which he had brought, who undertook to repay the money secured by Kanota and to enter Saito's house of prostitution for the purpose of earning this money. She lived in Saito's house and daily or nightly went to the house of prostitution run by him. He received from her nightly her earnings. She had been in this house two or three months at the time of being removed therefrom by the immigrant officers.

The other girl was surrendered or turned over to the keeping of a Japanese by the name of Hoshi about a month after Kanota's arrival in Seattle, Hoshi letting him have at the same time some $500 or $600, which she undertook to pay back out of her earnings in Saito's house of prostitution. The girl was taken to Hoshi's house and from there daily or nightly went or was taken to Saito's house of prostitution. As in the case of the other girl, she nightly delivered to Hoshi her earnings.

There was no evidence other than that recited above of force or restraint being used to influence the action of these girls, both girls testifying that they desired to stay in this house of prostitution until the money which they had contracted for had been repaid, one of them stating that she had to stay there until it was paid.

On this state of the facts the court instructed substantially that the jury must find that force was by the defendant used or some active agency brought to

bear upon the girl, coercing or impelling and influencing her to enter into or remain in a life of prostitution, when she would not otherwise have done so, before they could convict.

On this phase of the case I asked the court to give the following instruction, which it refused:

> Concerning this branch of the crime described by the statute, the same may be said as I have already said regarding the importation. The will, intent, or purpose of the girl or woman has nothing to do with the offense. If the other elements of the offense were present, a person who holds a woman or girl for the purposes of prostitution, willing, on her part, or unwillingly, with the desire on her part to so practice prostitution, or against her desire so to do, he is guilty. To constitute a holding under this law, it is not necessary that the defendant should use force or violent means to overcome a resistance on the part of the woman, either physical or of the will. She may even be willing, desirous, and anxious to cooperate with him in this purpose, but if he keeps, maintains, assists, provides for, advises or counsels or arranges matters under and in connection with the circumstances of the case and of the parties, it may constitute or make a holding for this purpose and would be a violation of the law and he would be guilty. If he holds her for the purpose of prostitution by the exercise of his will, by his dominion or influence over her, by any

means in connection with the circumstances in which she is placed and his attitude and relation toward her, he is guilty of the offense charged.

If the court is correct in the construction it places on the word *hold* in this statute, then I would respectfully suggest that steps be taken to secure an amendment of this act, so as to broaden it in this respect. I make this recommendation in part for the following reasons:

The act in question was manifestly passed by Congress for the purpose of protecting the people of this country against an undesirable class of immigrants. That this was the sole and governing purpose of Congress is shown by section 2 of the above-mentioned act wherein certain undesirable classes, including prostitutes, are denied admission to this country. In order further to prevent prostitutes coming or being brought to this country, and those who would probably become prostitutes, Congress passed section 3 of the act, making it an offense for any one to import a girl or woman into this country for the purposes of prostitution, and further, for the same purpose, making it an offense to hold such a girl or woman for such illegal purpose, pursuant to such an importation.

It is manifest, without argument, that it is the purpose of the importer, that is alluded to in this act, and it must be conceded that the women or girls contemplated by the act may either be professional prostitutes, desirous of coming or being brought to this

country for the purpose of engaging in their profession, or women or girls, more or less virtuous, who are brought or decoyed here by men or women whose purpose it is that they shall be devoted or broken in to a life of prostitution.

The judge's instruction and construction of this law seems to only contemplate the latter class, but unless the word "held" is to be given a broader meaning or construction than a coercive holding, or the holding of one unwillingly, we must convict Congress of a glaring oversight in this matter; for it needs no argument to convince one that a professional and matured prostitute coming to this country with the purpose, willing and anxious to enter upon a life of prostitution, is more of a menace to the morals of our people than some pure woman who, unwittingly, is being brought here by some one having the purpose or design of giving her over to a life of shame. Further, in this connection, it needs no argument to convince that such a prostitute, who would come here for the specific purpose of entering a life of prostitution, would not need to be compelled in any way to enter upon that life nor remain therein; hence, so far as the latter part of this section is concerned, if the word "hold" is to have the narrowed construction given it by the court, it would afford no protection to this country against the holding, maintaining, or controlling of prostitutes who come for the purpose, pursuant to their illegal importation. If the judge's construction is correct on this point,

then we are reduced to the conclusion that Congress has raised an additional barrier against the importation of pure women in the hands of scoundrels, who may purpose devoting them to a life of prostitution, over and above the barriers which it has erected for keeping out the already vicious and depraved class of prostitutes. This construction, it seems to me, does violence to the sole purpose for which Congress passed the act.

I am not inclined to say that the court is clearly wrong in this matter, for in criminal statutes it may be the duty of the court to give the narrow and restricted meaning to the enactment—that is, the construction most favorable to the defendant—but I feel firmly that either the court is mistaken in its construction or Congress should act further and broaden the statute, so as to apply to and cover the persons who cooperate with, assist, maintain, control, support, harbor, and keep the willing prostitute in pursuance of such illegal importation, as well as those who restrain and coerce the unwilling.

The necessity for this could not be more clearly shown than by a consideration of the character of Japanese girls and women.

By traditions and education they are taught to look upon prostitution more tolerantly than we do. They shoulder very freely their share of the blame, even when they have been taken advantage of and tricked for that purpose into this country. When once embarked on a life of prostitution, of itself, barring every other course before open to them, they may

be expected to stoutly maintain that they are remaining in it willingly, and desire so to do.

I respectfully submit the foregoing for your consideration, that you may, if you coincide with my view above expressed, take the matter up in conjunction with the Department of Commerce and Labor, with a view to having the act of Congress broadened in the respects above indicated.

Respectfully,

JESSE A. FRYE,
United States Attorney.
Per E.

OFFICE OF THE SOLICITOR-GENERAL,
Washington, D. C., January 18, 1905.

DEAR MR. SARGENT: In view of the charges of Judge Hanford in the case of the Japs prosecuted in Washington for holding for purposes of prostitution the Japanese girls we talked with at Port Townsend last October, that before they could be found guilty it must be shown that force, or some coercive power or active agency to compel obedience in an unwilling person, was used, which resulted in an acquittal, it becomes necessary to amend section 3 of the immigration law if it is to be enforced with any effect. If the court has placed the proper interpretation on the law, it is not possible to convict one guilty person out of twenty. We know, of course, that it is difficult to get an Asiatic to testify against one of their countrymen; and with the easy notions the women

have of their virtue, they will not testify to the truth, even though they have been tricked here and placed in a house of prostitution.

In view of this, I have drafted an amendment which, if enacted into law, will, I think, practically correct the evil. This amendment makes it unlawful for any person to harbor, etc., for purposes of prostitution, any woman within three years after she has entered the United States. I fix the time at three years because by section 21 of the act a prostitute could be deported within that time. If they can be kept out of business for three years, there will be but little inducement to bring them here. I take it that the two great purposes Congress had in mind was to protect the people of the United States against this class of persons and to protect girls who have been induced upon some other pretext to come here and then have been forced to enter upon a life of prostitution. For this reason I have omitted the word "knowingly" from before the words "keep, maintain," etc. This places upon the pimp, or keeper of a house of prostitution, the burden of ascertaining whether the woman or girl has been here three years. Otherwise, if the word were inserted, it would place the burden upon the Government of proving that the pimp had knowledge as to when the person entered the United States, and that would be almost impossible. I take it that Congress will not be over zealous in jealously protecting pimps, procurers, and keepers of houses of prostitution, and therefore will

not attempt to insert the word "knowingly" in the section if they amend it.

The department will forward officially a copy of the letter of the district attorney in which he expresses his views upon the subject.

Yours, sincerely,

JOHN L. LOTT.

Hon. F. P. SARGENT,
Commissioner-General of Immigration.

DEPARTMENT OF JUSTICE,
Washington, January 25, 1905.

The SECRETARY OF COMMERCE AND LABOR.

SIR: I inclose for your information a copy of a letter received from the United States attorney for the district of Washington reporting the acquittal of two Japanese—one Saito, and one Hoshi—who were indicted for the offense of holding two Japanese girls for purposes of prostitution, who had been imported into the United States for such purpose. The court in effect charged the jury that to constitute a violation of the statute there must be some coercion or force used to induce the girl to submit to be used for such purposes. As no appeal is given the Government in a criminal prosecution, if the law is to have any force it must be amended in the line suggested by the district attorney. I have, therefore, drafted and inclose herewith an amendment which, if enacted by Congress, will practically put a stop to the unlawful

bringing to this country of women for purposes of prostitution and of holding them for such purpose after being brought, or after they have entered of their own volition.

The present section creates two offenses—the unlawful importation and the unlawful holding in pursuance of such importation. The draft I send you provides for an additional offense—the keeping, maintaining, or harboring of any woman or girl, in a house or other place of prostitution, within one year after she shall have entered this country. This provision is necessary if lewd women are to be kept out of the country. In order to convict for a violation of either the first or second offenses named in the section, the unlawful importation must be shown. That is a most difficult fact to establish in the case of Asiatic women, who as a rule entertain much less regard for their virtue than is possessed by women of other nations. It is quite difficult, as your inspectors know, to induce a Japanese woman to testify against one of her own race, even though she has been induced by trickery to come here to be used for purposes of a life of shame. This was true in the case of the two girls held by Saito and Hoshi. They were tricked by Kanota, brought to this country and sold by him to Saito and Hoshi. They were required to stay at the houses of their owners, and to daily go to the houses of prostitution to ply their trade. Each night the money they had earned was taken from them, and when apprehended and placed in the detention house awaiting deportation, the only clothing they possessed was just sufficient to cover their naked-

ness. These girls, when delivered to their owners, were in a situation where they had to do either one of two things—submit to a life of prostitution, or be cast out upon the street to be picked up and deported. And yet, when placed upon the witness stand, these girls, knowing they were to be deported, refused to testify to the truth against their countrymen and by such refusal permitted them to escape punishment. Because of this reluctance to testify, as the law now stands, the Government can hope for convictions in but few instances, and therefore in the draft I have made there is defined an additional offense.

The new offense is for the keeping, maintaining, or harboring, for purposes of prostitution, any woman or girl within one year after she shall have entered the United States. Had such a provision been in the present law, Saito and Hoshi would have been convicted and sentenced to the penitentiary as they justly deserved. Such a provision will render it difficult for prostitutes who come here of their own accord to ply their vocations, and will practically destroy their usefulness to procurers for such a length of time as will render it unprofitable and dangerous to harbor them. It will also deter prostitutes from coming, and will provide a punishment for procurers and keepers of houses of prostitution where they within the year harbor alien prostitutes. In a prosecution for the new offense, unlawful importation need not be shown.

By section 20 of the immigration law, an alien who enters this country unlawfully may be deported

within two years, and by section 21 a person who, within three years after lawful entry, becomes a member of one of the prohibited classes may also be deported. Thus a woman upon arriving here may be virtuous, but upon landing she may fall into the hands of some designing villain and be forced into a life of shame. Under the present law, while such a woman may be deported, no punishment is provided for the scoundrel who reaps the profits of his infamy and of her shame. The new offense will reach that class of persons and justly punish them.

There can be no doubt of the power of Congress to punish the maintaining or harboring, during the probationary period, of an alien woman for purposes of prostitution; it is the same power invoked to punish for the offense of *holding*, for purposes of prostitution, of such an alien unlawfully imported. Every alien, upon lawful entry, is put upon good behavior for a period of three years. If within that time they become undesirable, they may be deported. Congress thus retains and exercises a direct control over all aliens during that period; and exercising that control, in a matter wholly within its jurisdiction, it may punish any act, by any person, the effect of which is to subject an alien to deportation and the Government to the expense of such deportation. This power is not different from that possessed by Congress over the Indians, in exercising which it makes it an offense for any person to sell intoxicating liquor to any Indian while he remains a ward of the Government.

I respectfully suggest for your consideration whether the attention of Congress should not be called to this weakness of the law in order that it may be remedied, to the end that a growing evil may be suppressed. Certainly no fair-minded person can or will object to the passage of such a measure, designed for the protection of the morals of our country.

Very respectfully,

W. A. DAY,
Acting Attorney-General.

DEPARTMENT OF COMMERCE AND LABOR,
OFFICE OF THE SECRETARY,
Washington, D. C., January 31, 1905.

SIR: I beg to inclose herewith a proposed amendment to section 3 of the act approved March 3, 1903.

This amendment is offered at the instance of the United States attorney for the district of Washington for the reason that Judge Hanford instructed the jury in a criminal action under the said section, that it would be necessary for the Government to prove that the holding of an imported prostitute was *against her will* in order to justify a verdict of guilty against the accused.

This draft was prepared by the Department of Justice, and, as there seems to be urgent necessity for the adoption of means that will render the section of the law mentioned effective of its purpose, I have

the honor to submit the amendment with favorable recommendation.

Respectfully,

V. H. METCALF,
Secretary.

Hon. W. P. DILLINGHAM,
Chairman Committee on Immigration,
United States Senate.

A BILL To amend section three of an act entitled "An act to regulate the immigration of aliens into the United States," approved March 3, 1903 (32 Stat., 1213).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section three of an Act entitled "An Act to regulate the immigration of aliens into the United States," approved March 3, 1903, be, and it is hereby, amended to read as follows:

"SEC. 3. That the importation into the United States of any woman or girl for the purposes of prostitution is hereby forbidden; and whoever shall import or attempt to import any woman or girl into the United States for the purposes of prostitution, or shall hold or attempt to hold, *with or without her consent,* any woman or girl for such purposes in pursuance of such illegal importation; *or whoever shall maintain, control, support, or harbor, in any house or other place, for purposes of prostitution, any woman or girl, within one year after she shall have entered the United States, shall, in each such case,* be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned not less than one nor more than five years, and pay a fine not exceeding five thousand dollars."

O

KELLER *v.* UNITED STATES.
ULLMAN *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Nos. 653, 654. Argued March 1, 1909.—Decided April 5, 1909.

Speaking generally, the police power is reserved to the States and there is no grant thereof to Congress in the Constitution.

Notwithstanding the offensiveness of the crime the courts cannot sustain a Federal penal statute if the power to punish the same has not been delegated to Congress by the Constitution.

Where there is collision between the power of the State and that of Congress, the superior authority of the latter prevails. While Congress has power to exclude aliens from, and to prescribe the terms and conditions on which aliens may come into, the United States, *Turner* v. *Williams*, 194 U. S. 279, that power does not extend to controlling dealings with aliens after their arrival merely on account of their alienage.

That portion of the act of February 20, 1907, c. 1134, 34 Stat. 898, which makes it a felony to harbor alien prostitutes *held*, unconstitutional as to one harboring such a prostitute without knowledge of her alienage or in connection with her coming into the United States, as a regulation of a matter within the police power reserved to the State and not within any power delegated to Congress by the Constitution.

SECTION 3 of the act of Congress of February 20, 1907, c. 1134, 34 Stat. 898, 899, entitled "An act to regulate the immigration of aliens into the United States" reads as follows:

"SEC. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or *whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars;* and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States, and shall be deported as provided by sections twenty and twenty-one of this act."

The plaintiffs in error were indicted for a violation of this section, the charge against them being based upon that portion of the section which is in italics, and in terms that they "wilfully and knowingly did keep, maintain, control, support and harbor in their certain house of prostitution" (describing it) "for the purpose of prostitution a certain alien woman, to wit, Irene Bodi," who was, as they well knew, a subject of the

King of Hungary, who had entered the United States within three years. A trial was had upon this indictment; the plaintiffs in error were convicted and sentenced to the penitentiary for eighteen months.

Mr. Benjamin C. Bachrach, with whom *Mr. Elijah N. Zoline* was on the brief, for plaintiffs in error:

The power to regulate vice and morality within the confines of a State is exclusively within the police power of the particular State and Congress has no power to pass laws of this nature affecting persons within the confines of any State. The police power of the State was never surrendered to the Federal Government. It is reserved to the State to be exercised by it in regulating and directing its internal affairs. *King* v. *Am. Transp. Co.*, 14 Fed. Cas. 512.

A State cannot divest itself of police power; this power is essential to its very existence, and it can neither surrender, abandon or barter it away.

All the powers of our National Government are powers delegated to it by the States, and the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Within the confines of a State of the United States there is no warrant for the exercise of such authority by the Federal Government, and the Federal Government has no such authority within the territory and jurisdiction of a State and over citizens of such State. Within the confines of the State the police power in its broadest and fullest extent exists and operates under state control. It can be invoked without Federal consent, and modified or relaxed without Federal interference. This power is inherent in the State. It finds its field of operation confined within the limits of its territorial jurisdiction. Whenever the Federal Government assumes to exercise police power within the confines of a State it invades the exclusive province and right of the State.

The state law reaches out and punishes offenses of the nature

embraced in this clause of the act of Congress of February 20, 1907. Under the police power of the State the State has ample authority to deal with the matter in such way as it may deem necessary and adequate, and the Federal Government has no power and no authority, corrective or visitorial, over the policy of the State in matters of police.

An alien after landing becomes amenable to the laws of the State in which he resides. Its police power reaches out and stretches around him to punish or protect him just the same as it does over a citizen. The laws of the State where he resides are invoked for his protection and for his punishment. The Federal laws have to do with his entering this country, but once he is admitted their application and operation terminates. Under the Federal law he may be deported for cause, yet to no punishment provided by Federal law can he be subjected for criminal acts committed within and punished by the State. Under the state law he must be tried and punished for his offense, the same as a citizen would be.

Upon the question of the power of Congress to enact the provisions herein in question, see *McCullough* v. *Maryland*, 4 Wheat. 405; *Houston* v. *Moore*, 5 Wheat. 48; *The Civil Rights Cases*, 109 U. S. 3; *The License Cases*, 5 How. 576; *Gibbons* v. *Ogden*, 9 Wheat. 203; *King et al.* v. *American Transp. Co.*, 14 Fed. Cas. 513; *Passenger Case*, 7 How. 283; *Township of Pine Grove* v. *Talcott*, 19 Wall. 666; *City of New York* v. *Miln*, 11 Pet. 139; *United States* v. *DeWitt*, 9 Wall. 41; *Slaughter House Cases*, 6 Wall. 64; *Patterson* v. *Kentucky*, 97 U. S. 503; *United States* v. *Knight*, 156 U. S. 11; *In re Rahrer*, 140 U. S. 555.

Mr. Assistant Attorney General Fowler for defendant in error:

The general powers of Congress with reference to aliens have been repeatedly declared by this court. *Turner* v. *Williams*, 194 U. S. 289; *Fong Yue Ting* v. *United States*, 149 U. S. 708; *Lees* v. *United States*, 150 U. S. 476, 480; *United States* v. *Bitty*, 208 U. S. 393.

The validity of the clause in question should be maintained because it relates to and materially affects the importation of the class of women mentioned therein.

The provisions in question did not appear in the act of March 3, 1903, 32 Stat. 1214, and manifestly Congress ascertained that, owing to the many subterfuges resorted to by those interested in the importation of women and girls for the purpose of prostitution and other immoral purposes, it was necessary to make it conclusive evidence that the importation was for such immoral purpose as she might be found engaged in within three years after her entry, and that he who might be found keeping her for an immoral purpose within such time, should be deemed to do so in pursuance of an unlawful importation. Viewed in that light, the provision is not at all unreasonable, and is most salutary in its restraint upon the importation of women and girls for such purposes; because it would be a comparatively easy matter to cover up an arrangement with a female that she come to the United States for an immoral purpose, and have her imported in such manner that it would be practically impossible for the object of the importation to be ascertained; while, if she is prohibited from engaging in such business, and all persons be prohibited from keeping her for such purpose for three years after her arrival, the inducement to procure alien females for immoral purposes would be destroyed.

The clause in question should be held valid because it relates to and materially affects the conditions upon which an alien female may be permitted to remain in this country, and the grounds which warrant her exclusion.

The admission of an alien female under this act may be regarded as only conditional, and for three years she is on probation; and, if within that time she be guilty of the acts therein mentioned, she forfeits her right to remain. And it is certainly within the power of Congress to provide a punishment for those who thus bring about her expulsion.

The validity of the provision in question should be deter-

mined from its general effect upon the importation and exclusion of aliens.

The question is, Do its provisions, and the fact that those who are guilty of such conduct as that for which plaintiffs in error have been convicted may be prosecuted in the United States courts, materially reduce the importation of females for immoral purposes, and thus restrain an evil with reference to which it has been universally held that Congress has the power to legislate? If they do, then this provision falls within the purview of congressional legislation, and is valid, notwithstanding the fact that the State has, in the exercise of its reserved powers, the right to punish plaintiffs in error for the same conduct.

There is nothing antagonistic or conflicting in the existence of these dual punishments for the same acts, inasmuch as they constitute two distinct offenses, the one against the state government and the other against the National Government; and the right of each of these two governments to inflict punishment for the same act has repeatedly been recognized by this court. *Moore* v. *The People*, 14 How. 14, 20; *Coleman* v. *Tennessee*, 97 U. S. 509; *Grafton* v. *United States*, 206 U. S. 333, 354. See also *United States* v. *Coombs*, 12 Pet. 71; *United States* v. *Marigold*, 9 How. 560, 568; *United States* v. *Bridleman*, 7 Fed. Rep. 894; *United States* v. *Holiday*, 3 Wall. 407.

MR. JUSTICE BREWER, after making the foregoing statement, delivered the opinion of the court.

The single question is one of constitutionality. Has Congress power to punish the offense charged, or is jurisdiction thereover solely with the State? Undoubtedly, as held, "Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive

officers." *Turner* v. *Williams*, 194 U. S. 279, 289. See also *Fong Yue Ting* v. *United States*, 149 U. S. 698, 708; *Head Money Cases*, 112 U. S. 580, 591; *Lees* v. *United States*, 150 U. S. 476, 480; *United States* v. *Bitty*, 208 U. S. 393.

It is unnecessary to determine how far Congress may go in legislating with respect to the conduct of an alien while residing here, for there is no charge against one; nor to prescribe the extent of its power in punishing wrongs done to an alien, for there is neither charge nor proof of any such wrong. So far as the statute or the indictment requires, or the testimony shows, she was voluntarily living the life of a prostitute, and was only furnished a place by the defendants to follow her degraded life. While the keeping of a house of ill-fame is offensive to the moral sense, yet that fact must not close the eye to the question whether the power to punish therefor is delegated to Congress or is reserved to the State. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally, that power is reserved to the States, for there is in the Constitution no grant thereof to Congress.

In *Patterson* v. *Kentucky*, 97 U. S. 501, 503, is this declaration:

"'In the American constitutional system,' says Mr. Cooley, 'the power to establish the ordinary regulations of police has been left with the individual States, and cannot be assumed by the national government.' Cooley, Const. Lim. 574. While it is confessedly difficult to mark the precise boundaries of that power, or to indicate, by any general rule, the exact limitations which the States must observe in its exercise, the existence of such a power in the States has been uniformly recognized in this court. *Gibbons* v. *Ogden*, 9 Wheat. 1; *License Cases*, 5 How. 504; *Gilman* v. *Philadelphia*, 3 Wall. 713; *Henderson* v. *Mayor of the City of New York*, 92 U. S. 259; *Railroad Company* v. *Husen*, 95 U. S. 465; *Beer Company* v. *Massachusetts*, 97 U. S. 25. It is embraced in what Mr. Chief Justice Marshall in *Gibbons* v. *Ogden*, calls that 'immense mass

of legislation,' which can be most advantageously exercised by the States, and over which the national authorities cannot assume supervision or control."

And in *Barbier* v. *Connolly*, 113 U. S. 27, 31, it is said:

"But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."

Further, as the rule of construction, Chief Justice Marshall, speaking for the court in the great case of *McCulloch* v. *Maryland*, 4 Wheat. 316, 405, declares:

"This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist."

In *Houston* v. *Moore*, 5 Wheat. 1, 48, Mr. Justice Story says:

"Nor ought any power to be sought, much less to be adjudged, in favor of the United States, unless it be clearly within the reach of its constitutional charter. Sitting here, we are not at liberty to add one jot of power to the National Government beyond what the people have granted by the Constitution." Art. X of Amendments; *City of New York* v. *Miln*, 11 Pet. 102, 133; *License Cases*, 5 How. 504, 608, 630; *United States* v. *Dewitt*, 9 Wall. 41, 44; *Patterson* v. *Kentucky*, 97 U. S. 501, 503; *Barbier* v. *Connolly*, 113 U. S. 27, 31; *In re Rahrer*, 140 U. S. 545, 555; *United States* v. *Knight*, 156 U. S. 1, 11; Cooley's Constitutional Limitations, 574.

Doubtless it not infrequently happens that the same act

may be referable to the power of the State, as well as to that of Congress. If there be collision in such a case, the superior authority of Congress prevails. As said in *City of New York* v. *Miln*, 11 Pet. 102, 137:

"From this it appears that whilst a State is acting within the legitimate scope of its power as to the end to be attained, it may use whatsoever means, being appropriate to that end, it may think fit; although they may be the same, or so nearly the same, as scarcely to be distinguishable from those adopted by Congress acting under a different power, subject only, say the court, to this limitation, that in the event of collision, the law of the State must yield to the law of Congress. The court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power."

In *Gulf, Colorado & Santa Fe Railway* v. *Hefley*, 158 U. S. 98, 104, the rule is stated in these words:

"Generally it may be said in respect to laws of this character that, though resting upon the police power of the State, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject-matter, for that power, like all other reserved powers of the States, is subordinate to those in terms conferred by the Constitution upon the nation. 'No urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution.' *Henderson* v. *New York*, 92 U. S. 259, 271. 'Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the General Government, or rights granted or secured by the supreme law of the land.' *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650, 661. 'While it may be a police power in the sense that all provisions for the health, comfort, and security of the citizens are police regulations, and an exercise of the police power, it has been said more than once in this court that, where such powers are so exercised as to come within the domain of Federal authority as defined

by the Constitution, the latter must prevail.'" *Morgan* v. *Louisiana*, 118 U. S. 455, 464. See also *Lottery Case*, 188 U. S. 321.

The question is, therefore, whether there is any authority conferred upon Congress by which this particular portion of the statute can be sustained. By § 2 of Art. II of the Constitution, power is given to the President, by and with the advice and consent of the Senate, to make treaties, but there is no suggestion in the record or in the briefs of a treaty with the King of Hungary under which this legislation can be supported.

The general power which exists in the Nation to control the coming in or removal of aliens is relied upon, the Government stating in its brief these two propositions:

"The clause in question should be held valid because it relates to and materially affects the conditions upon which an alien female may be permitted to remain in this country, and the grounds which warrant her exclusion.

* * * * * * * *

"The validity of the provision in question should be determined from its general effect upon the importation and exclusion of aliens."

But it is sufficient to say that the act charged has no significance in either direction.

As to the suggestion that Congress has power to punish one assisting in the importation of a prostitute, it is enough to say that the statute does not include such a charge; the indictment does not make it, and the testimony shows, without any contradiction, that the woman, Irene Bodi, came to this country in November, 1905; that she remained in New York until October, 1907; then came to Chicago and went into the house of prostitution which the defendants purchased in November, 1907, finding the woman then in the house; that she had been in the business of a prostitute only about ten or eleven months prior to the trial of the case in October, 1908, and that the defendants did not know her until November, 1907. In view of those facts the question of the power of Congress to punish

those who assist in the importation of a prostitute is entirely immaterial.

The act charged is only one included in the great mass of personal dealings with aliens. It is her own character and conduct which determines the question of exclusion or removal. The acts of others may be evidence of her business and character. But it does not follow that Congress has the power to punish those whose acts furnish evidence from which the Government may determine the question of her expulsion. Every possible dealing of any citizen with the alien may have more or less induced her coming. But can it be within the power of Congress to control all the dealings of our citizens with resident aliens? If that be possible, the door is open to the assumption by the National Government of an almost unlimited body of legislation. By the census of 1900 the population of the United States between the oceans was in round numbers 76,000,000. Of these, 10,000,000 were of foreign birth, and 16,000,000 more were of foreign parentage. Doubtless some have become citizens by naturalization, but certainly scattered through the country there are millions of aliens. If the contention of the Government be sound, whatever may have been done in the past, however little this field of legislation may have been entered upon, the power of Congress is broad enough to take cognizance of all dealings of citizens with aliens. That there is a moral consideration in the special facts of this case, that the act charged is within the scope of the police power, is immaterial, for, as stated, there is in the Constitution no grant to Congress of the police power. And the legislation must stand or fall according to the determination of the question of the power of Congress to control generally dealings of citizens with aliens. In other words, an immense body of legislation, which heretofore has been recognized as peculiarly within the jurisdiction of the States, may be taken by Congress away from them. Although Congress has not largely entered into this field of legislation, it may do so, if it has the power. Then we should be brought face to face with such a change in the internal conditions of this country

as was never dreamed of by the framers of the Constitution. While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced. *Fairbank* v. *United States*, 181 U. S. 283. To exaggerate in the one direction and restrict in the other will tend to substitute one consolidated government for the present Federal system. We should never forget the declaration in *Texas* v. *White*, 7 Wall. 700, 725, that "the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

The judgments are reversed, and the cases remanded to the District Court of the United States for the Northern District of Illinois with instructions to quash the indictment.

MR. JUSTICE HOLMES, dissenting.

For the purpose of excluding those who unlawfully enter this country Congress has power to retain control over aliens long enough to make sure of the facts. *Yamataya* v. *Fisher* (*Japanese Immigrant Case*), 189 U. S. 86. To this end it may make their admission conditional for three years. *Pearson* v. *Williams*, 202 U. S. 281. If the ground of exclusion is their calling, practice of it within a short time after arrival is or may be made evidence of what it was when they came in. Such retrospective presumptions are not always contrary to experience or unknown to the law. *Bailey* v. *Alabama*, 211 U. S. 452, 454. If a woman were found living in a house of prostitution within a week of her arrival, no one, I suppose, would doubt that it tended to show that she was in the business when she arrived. But how far back such an inference shall reach is a question of degree like most of the questions of life. And, while a period of three years seems to be long, I am not prepared to say, against the judgment of Congress, that it is too long.

The statute does not state the legal theory upon which it was enacted. If the ground is that which I have suggested, it is fair

to observe that the presumption that it creates is not open to rebuttal. I should be prepared to accept even that, however, in view of the difficulty of proof in such cases. Statutes of which the justification must be the same are familiar in the States. For instance, one creating the offense of being present when gaming implements are found, *Commonwealth* v. *Smith*, 166 Massachusetts, 370, 375, 376, or punishing the sale of intoxicating liquors without regard to knowledge of their intoxicating quality, *Commonwealth* v. *Hallett*, 103 Massachusetts, 452, or throwing upon a seducer the risk of the woman turning out to be married or under a certain age. *Commonwealth* v. *Elwell*, 2 Met. 190; *Reg.* v. *Prince*, L. R. 2 C. C. 154. It is true that in such instances the legislature has power to change the substantive law of crimes, and it has been thought that when it is said to create a conclusive presumption as to a really disputable fact, the proper mode of stating what it does, at least as a general rule, is to say that it has changed the substantive law. 2 Wigmore, Ev., §§ 1353 *et seq.* This may be admitted without denying that considerations of evidence are what lead to the change. And if it should be thought more philosophical to express this law in substantive terms, I think that Congress may require, as a condition of the right to remain, good behavior for a certain time, in matters deemed by it important to the public welfare and of a kind that indicates a preëxisting habit that would have excluded the party if it had been known. Therefore I am of opinion that it is within the power of Congress to order the deportation of a woman found practicing prostitution within three years.

If Congress can forbid the entry and order the subsequent deportation of professional prostitutes, it can punish those who coöperate in their fraudulent entry. "If Congress has power to exclude such laborers . . . it has the power to punish any who assist in their introduction." That was a point decided in *Lees* v. *United States*, 150 U. S. 476, 480. The same power must exist as to coöperation in an equally unlawful stay. The indictment sets forth the facts that constitute such coöperation

and need not allege the conclusion of law. On the principle of the cases last cited, in order to make its prohibition effective the law can throw the burden of finding out the fact and date of a prostitute's arrival from another country upon those who harbor her for a purpose that presumably they know in any event to be contrary to law. Therefore, while I have admitted that the time fixed seems to me to be long, I can see no other constitutional objection to the act, and, as I have said, I think that that one ought not to prevail.

MR. JUSTICE HARLAN and MR. JUSTICE MOODY concur in this dissent.